

FIRST  
ANNUAL REPORT  
OF THE  
NATIONAL LABOR  
RELATIONS BOARD  
FOR THE FISCAL YEAR  
ENDED JUNE 30  
1936

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**FIRST ANNUAL REPORT**  
**OF THE**  
**NATIONAL LABOR**  
**RELATIONS BOARD**

**For the Fiscal Year Ended**  
**June 30, 1936**



PROPERTY OF THE UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

UNITED STATES  
GOVERNMENT PRINTING OFFICE  
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## NATIONAL LABOR RELATIONS BOARD

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J. WARREN MADDEN, *Chairman.*  
JOHN M. CARMODY.  
EDWIN S. SMITH.

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BENEDICT WOLF, *Secretary.*  
BEATRICE M. STERN, *Assistant Secretary.*

---

CHARLES FAHY, *General Counsel.*  
ROBERT B. WATTS, *Associate General Counsel.*  
NATHAN WITT, *Assistant General Counsel.*

---

DAVID J. SAPOSS, *Chief Industrial Economist.*

---

MALCOLM ROSS, *Director of Publications.*

## LETTER OF TRANSMITTAL

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NATIONAL LABOR RELATIONS BOARD,  
*Washington, D. C., January 4, 1937.*

SIR:

I have the honor to submit to you the First Annual Report of the National Labor Relations Board, for the fiscal year ended June 30, 1936, in compliance with the provisions of section 3 (c) of the National Labor Relations Act, approved July 5, 1935.

J. WARREN MADDEN, *Chairman.*

The PRESIDENT OF THE UNITED STATES,  
The PRESIDENT OF THE SENATE,  
The SPEAKER OF THE HOUSE OF REPRESENTATIVES,  
*Washington, D. C.*

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*Passel Remiller*

## FIRST ANNUAL REPORT OF THE NATIONAL LABOR RELATIONS BOARD

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### I. INTRODUCTION

The National Labor Relations Board was created not as a completely new experiment in the field of labor relations but as a result of the cumulative experience of many years during which various ways to deal with labor relations had been tried by the Federal Government. From this experience was evolved the plan incorporated in the National Labor Relations Act in the field of interstate commerce. A brief account of this history may be useful.

The first role of the Federal Government in the field of labor relations was that of a military preserver of the peace in strike areas where local and State governmental agencies claimed to be unable to control the violence incident to specific strikes. Many calls were made upon the Federal Government for intervention in such circumstances, and frequently the Federal Government responded. Although this intervention resulted in bitter protests by labor organizations, it evoked no complaint from industry against governmental interference. The Federal Government, through its courts, also intervened in this field. The increasingly frequent use of injunctions against strikers, obtained by employers, was a source of constant complaint by the unions, but again the employers had no objection to this particular form of Federal intervention.

It was in the railroad industry that the Government first began to play the role it has now adopted for other industries in which a strike would interrupt interstate commerce. In 1888 Congress passed a statute applying to the railroad industry providing for the investigation, by a Commission consisting of the United States Commissioner of Labor and two other people to be appointed by the President for each dispute, of labor disputes threatening to interrupt interstate commerce, and for arbitration. The parties did not avail themselves of this law and it became a dead letter. In 1898 the Erdman Act was passed, providing for temporary boards to be appointed to mediate and conciliate disputes, and providing also for voluntary arbitration. No provision was made for investigations. In 1913 the Newlands Act was passed, establishing a Board of Mediation and Conciliation to settle labor disputes in the railroad industry. This Board had the power to render opinions as to the meaning and application of agreements which had been arrived at by the process of mediation, but whose interpretation was in dispute. The act also contained provisions for arbitration.

In 1920 an act was passed setting up a tripartite board, composed of representatives of labor, industry and the public, to hear

all disputes which the parties could not settle in conference. This board could render decisions, but the parties were not compelled to comply with the board's orders. The Railway Labor Act of 1926 made it mandatory upon the railroads and the employees to exert every reasonable effort to make and maintain agreements through representatives chosen by each party, free from interference by the other. A board for the purpose of mediation of disputes was also established. This act was amended in 1934, but its essential principles remained unchanged. The employees, under this act, are protected in their right of self-organization free from the interference of the employers.

This summary review of legislation affecting the railroad industry makes it apparent that the entrance of the Federal Government into labor disputes for the purpose of protecting the right of employees to self-organization and collective bargaining, is not a novel thing.

As early as 1876 the Federal Government conducted investigations of labor relations. In 1882 the Senate, by resolution, directed the Committee on Education and Labor to undertake a study of labor disputes, inquire into their causes, and to recommend suitable legislation. Four subsequent commissions made extensive inquiries into the problem—the Industrial Commission of 1898, the Anthracite Coal Commission of 1902, the United States Commission on Industrial Relations of 1912, and President Wilson's Industrial Conferences of 1919. The first three of these were authorized by acts of Congress. In 1884 the Government formed the Bureau of Labor, and through this medium and through special commissions it intervened in disputes between employers and employees. Mediation in all industries has been carried on, since its inception in 1913, by the Division of Conciliation of the Department of Labor.

During the World War the activities of the Government in the field of labor relations increased tremendously. A labor adjustment board, consisting of representatives of the Government, labor and employers, was created in August 1917 to deal with labor disputes, and boards or committees were appointed in connection with the War Industries Board, the War and Navy Departments, the Fuel Administration, the United States Shipping Board and other agencies. Finally, upon the recommendation of the War Labor Conference Board, the Government created the National War Labor Board, to "settle by mediation and conciliation controversies arising between employers and workers in fields of production necessary for the effective conduct of the war, or in other fields of national activity delays and obstructions which might, in the opinion of the National Board, affect detrimentally such production; \* \* \* and to summon the parties to controversies for hearing and action by the National Board in the event of failure to secure settlement by mediation and conciliation."

The National War Labor Board enunciated a set of policies to cover labor relations and standards of labor. With regard to labor relations, it forbade any interference by employers with the right of workers to organize and to bargain collectively, and forbade discrimination against workers for legitimate union activity. In indus-

trial fields where a means of settlement of disputes had been created by agreement or by Federal law, the board took no jurisdiction, but in all other cases where labor disputes involved the principles it had laid down it took jurisdiction and its decisions were binding.

The War Labor Board remained in active existence from April 1918 to August 1919, during which time 1,251 controversies were submitted to it for decision. It made awards and findings in 490 of these cases, dismissed 392 cases, and referred 315 cases to umpires. The Board's awards directly affected more than 1,100 establishments employing more than 700,000 people. Its activities had an important effect on labor relations during that period.

In 1933, in the National Industrial Recovery Act, the Federal Government again entered the field of labor relations. From what has been said above it is apparent that in so doing it was establishing no precedent. It already had gained much experience, some of which proved that there was a useful place in this field for the Federal Government.

## II. PREDECESSOR BOARDS

### A. NATIONAL LABOR BOARD

On June 16, 1933, the National Industrial Recovery Act went into effect. This act provided for the establishment of codes of fair competition for the various industries, and section 7 (a) of the act made it mandatory that each code approved, prescribed, or issued pursuant to the act contained the following conditions:

(1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

(2) That no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; \* \* \*

Shortly after this act was put into operation the President proposed that all employers not yet under a code subscribe to the President's Reemployment Agreement, an agreement setting forth certain labor standards and incorporating the portions of section 7 (a) of the National Industrial Recovery Act set forth above.

It became apparent very quickly that some agency would be necessary to handle labor disputes arising under the codes or the President's Reemployment Agreement, and on August 5, 1933, upon the request of the Industrial and Labor Advisory Boards of N. R. A., the President created the National Labor Board. This Board, composed of representatives of labor and industry, with Senator Robert F. Wagner as its impartial chairman, was to "consider, adjust, and settle differences and controversies that may arise through differing interpretations of the President's Reemployment Agreement \* \* \*."

At the time this Board was created there was still a possibility that each code would carry provisions for a labor relations board for the particular industry covered by the code. Most of the codes thereafter contained no such provisions, however, and by necessity the National Labor Board took jurisdiction over all labor disputes arising under either the codes or the President's Reemployment Agreement. It limited its jurisdiction, however, to those cases which involved alleged violations of section 7 (a).

The Board soon found it necessary to expand its activities. In order to take care of the large number of disputes arising under section 7 (a), it established 20 regional boards, composed of representatives of labor and industry, with a representative of the public as impartial chairman, to adjust cases and hold hearings in the regions where the controversies arose, and thus expedite the cases and enable the parties to avoid the burden of coming to Washington.

As a result of several flagrant cases of defiance of the Board by large employers, the President, in order to establish the authority of

the Board more clearly, issued a series of Executive orders. The first, dated December 16, 1933, gave the Board the right to adjust all industrial disputes arising out of the operation of the President's Reemployment Agreement or the codes, and "to compose all conflicts threatening the industrial peace of the country." It also approved and ratified all action previously taken by the Board. This order contained no provision, however, for the enforcement of the Board's decisions. Nor was there any specific authorization for holding elections, a device frequently used by the Board to determine the employees' choice of representatives for the purpose of collective bargaining with their employer. Executive orders were issued by the President on February 1 and February 23, 1934, to meet these omissions, and these orders gave the Board the right to conduct elections, and to publish the names of the representatives who were selected by a majority of the employees voting, "and have been thereby designated to represent all the employees eligible to participate in such an election \* \* \*." The Executive orders also provided that the Board could report its findings of violation of section 7 (a) and its recommendations to the Attorney General for possible prosecution or to the Compliance Division of N. R. A. for appropriate action. No further changes were made in the powers of the Board until it ceased to exist on July 9, 1934.

The accomplishments of the Board were divided into two categories—settlements and decisions. In the first months of its operations the main objective of the Board was the settlement of the disputes which came to its attention. During the course of its existence, from August 5, 1933, to July 9, 1934, the Board and its agents settled 1,019 strikes, involving 644,209 employees, and averted strikes in 498 cases involving 481,617 employees. In addition, the Board settled about 1,800 disputes in cases where there were no strikes or threats of strikes.

It is thus apparent that the work of the National Labor Board had a beneficial effect on labor relations during its existence. The gain to the public and to the parties in money saved and hardship and suffering averted by the peaceful settlement of these disputes or the reduction in the length of strikes, and the protection thus afforded the Nation's commerce was tremendous.

In addition to the work just described, the Board held hearings and issued findings and recommendations in cases where no settlement had been achieved. Most of these decisions involved the interpretation of section 7 (a), and its application to the facts of particular cases. The Board's decisions, if not accepted by the employer, were sent to the Compliance Division of N. R. A. with a recommendation that the employer's Blue Eagle be removed.

Even in those cases in which the National Labor Board's decisions were not carried out, a positive gain was recorded. By means of these decisions, the Board called to the attention of the public various types of situations in the field of labor relations, and provided the basis for new legislation, based on its actual experience.

## B. THE FIRST NATIONAL LABOR RELATIONS BOARD

The value of a permanent Government board in the field of labor relations had become apparent. As a result in the spring of 1934

a bill was introduced into Congress prohibiting certain acts by employers as an interference with their employees' right of self-organization, and providing for a board to administer the law. The bill did not reach the floor of Congress for a vote, and temporary legislation in the form of a joint resolution was passed by both Houses of Congress and was approved by the President on June 19, 1934.

This joint resolution (Public Res. 44, 73d Cong.) authorized the President to establish one or more boards to investigate the facts in labor controversies arising under section 7 (a) of the National Industrial Recovery Act or controversies which burden or obstruct, or threaten to burden or obstruct, the free flow of interstate commerce. The boards were given the right to conduct elections among employees to determine their representatives for collective bargaining, and to issue subpoenas in connection with such elections. In addition, the resolution provided for review by the United States Circuit Courts of Appeals of orders made by the boards in election cases.

The President, on June 29, 1934, issued an Executive order creating a "National Labor Relations Board", and dissolving the National Labor Board on July 9, 1934. Lloyd K. Garrison, Harry A. Millis, and Edwin S. Smith were appointed to the new Board. (Dean Garrison resigned in October 1934, and the following month Francis Biddle took his place as chairman.) The employees of the National Labor Board were transferred to the new Board.

The President, on June 30, 1934, stated that the Executive order "establishes upon a firm statutory basis the additional machinery by which the United States Government will deal with labor relations \* \* \*." The Board was empowered by the Executive order to investigate controversies and hold elections in accordance with the terms of Public Resolution No. 44, to hold hearings and make findings of fact regarding violations of section 7 (a), and to act as a board of voluntary arbitration. The Board was directed to study the activities of other boards created to deal with labor relations, and to recommend, where necessary, the establishment of special labor boards for particular industries. By the terms of the Public Resolution 44, the existence of the Board was to terminate on June 16, 1935.

The First National Labor Relations Board commenced its operations on July 9, 1934. It continued in existence the various regional boards, but because of the burden of administrative work which had devolved upon the nonpaid impartial chairmen of these boards, it was decided to make the paid executive secretaries the administrative heads, under the title of regional director, and to install the panel system whereby each case in the region would be heard by one representative of labor, one representative of industry, and one representative of the public, the panel to be chosen in each instance by the regional director. This change divided the work among the volunteer nonpaid members of the regional boards, and abolished delay which had resulted from attempts to get all the regional board members to sit on each case. However, the system was permitted to remain sufficiently flexible to meet the needs of the particular communities.

Under the procedure adopted by the Board, complaints of violations of section 7 (a) were filed with the regional board. If the con-



troversy could not be adjusted by mediation, a hearing was held. No formal pleadings were used, nor were strict rules of evidence followed. The panel which heard the case rendered its findings of fact, and where a violation was found, its recommendations of the action the employer should take to bring about a condition in conformity with the law. If either party appealed, or if the employer refused to comply, the case was forwarded to the National Board, which, after oral argument or the submission of briefs, or in some cases, further hearing, issued its decisions. If no compliance resulted, the case might be sent to the Attorney General for prosecution, and to the Compliance Division of N. R. A. with a recommendation that the employer's Blue Eagle be removed.<sup>1</sup>

The life of the Board was extended by successive Executive orders from June 16, 1935, to August 27, 1935, although the active work of the Board practically ceased immediately after the issuance by the Supreme Court on May 27, 1935 of its decision in the case of *Schechter Poultry Company et al. v. United States*. The record of accomplishment of this Board again clearly proved the beneficial effect of Federal intervention in the field of labor relations, and the desirability of the existence of a Government board for this purpose. The Board, in the period from July 9, 1934 to May 30, 1935, settled 703 strikes, involving 229,640 employees. It succeeded in averting threatened strikes in 605 cases, involving 536,398 employees, by securing agreements between the parties. In addition, it settled about 1,400 disputes in cases where there were no strikes or threats of strikes. During this period, elections under the supervision of the Board were conducted in 579 employee units, covering 56,814 employees. As a result of these elections, the employers recognized the elected representatives in 306 cases, and in 278 cases harmonious relations resulted. Compliance was secured in 46 of the 158 cases in which the Board directed compliance in formal decisions. The advantages of a Federal board handling labor disputes in this manner, as a substitute for intervention by Federal troops or of a policy of noninterference in the combat of the disputants, are too obvious to need elaboration.

In addition to the foregoing, the Board was continuing the National Labor Board's endeavor to build up a body of labor law. It issued formal decisions in 202 cases, seeking to develop a set of decisions in harmony with the language and intent of section 7 (a), and thus make available, for the purpose of future legislation, the knowledge and experience it had gained from the cases before it. It added substantially to the contribution of the National Labor Board in this field and left a very creditable record of accomplishment.

### C. OTHER BOARDS<sup>2</sup>

During the time that the National Labor Board and the First National Labor Relations Board were in existence, there were several

<sup>1</sup> In 46 of the cases referred to the Compliance Division by the Board, the National Recovery Administration directed the removal of the employers' Blue Eagles.

<sup>2</sup> In addition to the Boards mentioned in this section, boards were set up, pursuant to code provisions or administrative orders in the following industries: Construction, cotton garment, graphic arts, coat and suit, electrotyping and stereotyping, photoengraving, trucking, textile print roller, printing ink manufacturing, infants' and children's wear, household goods storage, motion picture, dress manufacturing, men's neckwear, cigar manufacturing, men's clothing, brewing, lithograph printing.

other boards, with jurisdiction over labor relations in particular industries, which had been created by codes or pursuant to Public Resolution No. 44. Of the Boards which handled 7 (a) cases, the National Bituminous Coal Labor Board (together with six divisional boards) and the Newspaper Industrial Board were established by codes. Administrative orders issued under the authority of codes established boards to handle labor disputes in the textile industries, and ship-building and ship-repairing industry. The Secretary of the Interior, in his capacity as Administrator of the Petroleum Code, issued an administrative order establishing the Petroleum Labor Policy Board.

In addition to the foregoing, the President created the Automobile Labor Board by Executive order, and pursuant to the authority vested in him by Public Resolution 44, created the National Longshoremen's Board (with jurisdiction limited to the Pacific coast), the National Steel Labor Relations Board, and the Textile Labor Relations Board. The latter Board, composed of three representatives of the public, replaced the Cotton Textile Board, which had been tripartite in form.

The National Labor Relations Board, in reporting to the President the result of a study of these various Boards, concluded that separate boards for the various industries were not desirable, but that it was best to have one impartial national board to determine, in the last instance and subject only to court review, all questions of the interpretation and application of 7 (a), and that geographically distributed subagencies should handle the cases in the first instance. The results of this study helped to determine the form of the legislation which was being prepared to replace Public Resolution 44.

We have dealt at some length with the history of the legislation preceding the National Labor Relations Act and of the boards replaced by the present National Labor Relations Board to indicate to what a great extent the present legislation was the carefully considered result of actual experience gained by other Governmental agencies in the field of labor relations, rather than a new experiment with untried devices.

### III. THE NATIONAL LABOR RELATIONS ACT

#### A. LEGISLATIVE HISTORY

The National Labor Relations bill was re-introduced by Senator Wagner in the Senate on February 21, 1935 (S. 1958, 74th Cong., 1st sess., 79 Cong. Rec. 2454-2458), and on February 28, 1935, a companion bill was introduced in the House by Representative Connery (H. R. 6288, 79 Cong. Rec. 2783). Hearings were held before the Senate Committee on Education and Labor on March 11-14, March 15-19, and March 21-April 2; and before the House Committee on Labor on March 13, 14, 19, 20, 28, and April 3-4. On May 2, 1935, the bill was reported by the Senate Committee, with minor amendments (Rept. No. 573), and after debate, was passed by the Senate on May 16, 1935, without amendment, by a vote of 63 to 12 (79 Cong. Rec. 7846-7855, 7858, 7877, 7848-7960, 7967-7980).

The bill was reported by the House Committee on Labor on May 21, 1935 (Rept. No. 972), thereafter recommitted, and subsequently reported with further amendments on June 10, 1935 (Rept. No. 1147). The bill was extensively debated on the House floor and passed with amendments on June 19, 1935, without a record vote (79 Cong. Rec. 10057-10092, 10094-10111). After conference, the bill was approved by both Houses on June 27, 1935 (79 Cong. Rec. 10668, 10704-10705; Conference Report No. 1371), and signed by President Roosevelt on July 5, 1935.<sup>1</sup>

#### B. POLICY AND PROVISIONS

The act, both in its substantive and procedural provisions, remedies the defects disclosed by experience under previous statutes, and at the same time makes no departure from traditional principles of substantive law or statutory administration.

<sup>1</sup> The President, on approving the National Labor Relations Act, made the following statement:

"This act defines, as a part of our substantive law, the right of self-organization of employees in industry for the purpose of collective bargaining, and provides methods by which the Government can safeguard that legal right. It establishes a National Labor Relations Board to hear and determine cases in which it is charged that this legal right is abridged or denied, and to hold fair elections to ascertain who are the chosen representatives of employees.

"A better relationship between labor and management is the high purpose of this act. By assuring the employees the right of collective bargaining it fosters the development of the employment contract on a sound and equitable basis. By providing an orderly procedure for determining who is entitled to represent the employees, it aims to remove one of the chief causes of wasteful economic strife. By preventing practices which tend to destroy the independence of labor it seeks, for every worker within its scope, that freedom of choice and action which is justly his.

"The National Labor Relations Board will be an independent quasi-judicial body. It should be clearly understood that it will not act as mediator or conciliator in labor disputes. The function of mediation remains, under this act, the duty of the Secretary of Labor and of the Conciliation Service of the Department of Labor. It is important that the judicial function and the mediation function should not be confused. Compromise, the essence of mediation, has no place in the interpretation and enforcement of the law.

"This act, defining rights, the enforcement of which is recognized by the Congress to be necessary as both an act of common justice and economic advance, must not be misinterpreted. It may eventually eliminate one major cause of labor disputes, but it will not stop all labor disputes. It does not cover all industry and labor, but is applicable only when violation of the legal right of independent self-organization would burden or obstruct interstate commerce. Accepted by management, labor, and the public with a sense of sober responsibility and of willing cooperation, however, it should serve as an important step toward the achievement of just and peaceful labor relations in industry."

1. *Findings and policy.*—Section 1 of the act, after setting forth the effect of unfair labor practices and labor disputes upon the free flow of interstate commerce, concludes in these terms, which summarize the theory underlying the entire statute:

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

2. *The Board.*—For the effectuation of this policy, the act sets up a nonpartisan, quasi-judicial board of three members appointed by the President, independent of any other department of the Government (sec. 3 (a)). In order to dispel the confusion resulting from the dispersion of authority, and to establish a single paramount agency in connection with the development of the law, the act makes clear that the Board's jurisdiction over the subject matters committed to it shall be exclusive, and shall not be affected by any other methods of adjustment or prevention established by agreement or law (sec. 10 (a)).

The Board is authorized to make and publish such rules and regulations as may be necessary to carry out the provisions of the act (sec. 6).

3. *Rights of employees.*—Section 7 reaffirms long recognized fundamental rights enjoyed by American workers, as follows:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Section 8 implements these rights by enumerating and prohibiting certain specific unfair labor practices by employers. These may be briefly summarized as follows:

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment, to encourage or discourage membership in any labor organization.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the act.

(5) To refuse to bargain collectively with the duly chosen representatives of employees.

To subsection 3 there is added a proviso that nothing in the act shall make illegal a closed-shop agreement between an employer and the duly chosen representatives of his employees. It should be noted

that this provision does not make the closed shop legal, but simply declares that nothing in the act shall make a closed shop illegal, under proper safeguards. Congress did not think it wise to make a general rule when the decisions of various State courts were diverse, and therefore simply preserved the status quo on this debatable point. That is the sum and substance of this provision. No closed shop can be established without the consent of the employer himself in negotiation with the representatives of his employees.

4. *Representatives and elections.*—Since collective bargaining is carried on through representatives of employees, the act follows established precedents for the factual determination of such representatives. Section 9 (a) provides that representatives selected by the majority of employees in a unit appropriate for collective bargaining shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining. The act thus affirms the majority-rule principle, which is inherent in the practice of collective bargaining as in the practice of dealing through representatives generally, whether for governmental, corporate, or other purposes.

Section 9 (b) authorizes the Board to determine in the appropriate case whether, in order to insure to employees the full benefit of their right to self-organization and collective bargaining, and otherwise to effectuate the policies of the act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

In order to resolve in an orderly way doubts as to the representatives of employees, the Board is specifically empowered to investigate questions concerning the representation of employees, to conduct elections in appropriate cases, and to certify to the parties the name or names of the representatives that have been designated (sec. 9 (c)).

5. *Jurisdiction.*—The Board is given no blanket authority over all employers and employees in all industry, even in the restricted field of labor relations in which the act operates. Jurisdiction is limited to the investigation of questions “affecting commerce” concerning the representation of employees (sec. 9 (c)), and to the prevention of unfair labor practices “affecting commerce” (sec. 10 (a)). The term “commerce” is specifically defined to include interstate or foreign commerce in the traditional sense, apart from the territories and the District of Columbia (sec. 2 (6)). The term “affecting commerce” is defined to mean “in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce” (sec. 2 (7)). It is thus insured that the Board’s authority is coextensive with Federal power under the Constitution.

6. *Procedure.*—The machinery for the prevention of unfair labor practices “affecting commerce” follows closely the familiar provisions of the Federal Trade Commission Act, a procedural pattern which has been repeatedly approved as an appropriate and constitutional method for the administration of Federal law. Whenever it is charged that an unfair labor practice affecting commerce has been or is being engaged in, the Board or its designated agent is

authorized to issue a formal complaint stating the charges and noticing the matter for hearing. The person complained of has the right to file an answer, and to appear and give testimony. Interested persons may be permitted to intervene. The testimony is reduced to writing. Thereupon the Board states its findings of fact, and either dismisses the complaint if found unsubstantiated by the proof or issues an order requiring the person complained of to cease and desist from the unfair labor practices engaged in and possibly to take incidental affirmative action (sec. 10 (b), 10 (c)).

Orders of the Board are not self-enforcing. To secure compliance, the Board must petition the appropriate circuit court of appeals and file with that court the record taken before the Board. The court is authorized to make a decree enforcing, modifying, or setting aside the Board's order in whole or part. In like manner, any person aggrieved by a final order of the Board may obtain a similar review by filing in the appropriate circuit court of appeals a petition that the order be modified or set aside (sec. 10 (e), 10 (f)).

The procedure in election cases is likewise outlined by the act. Whenever a question "affecting commerce" arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties the name or names of the representatives that have been designated. In any such investigation the Board must provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives (sec. 9 (c)). Such investigation results merely in a certification of the fact as to the employees' choice of representatives. However, if a cease-and-desist order should be made under section 10, based in whole or in part on certification of the fact as to choice of representatives under section 9 (c), such certification and the record of the investigation upon which it is based must be included in the transcript of the entire record to be filed with the circuit court of appeals under sections 10 (e) and 10 (f), and the decree of that court enforcing, modifying, or setting aside such order is then made and entered upon the pleadings, testimony, and proceedings set forth in such transcript (sec. 9 (d)). This provision insures appropriate judicial review of matters involved in election proceedings, and at the same time makes clear that the holding of such elections shall not be delayed by premature attempts to secure court review at this stage.

For the purpose of oral hearings and investigations which are necessary and proper in the exercise of the foregoing powers, the Board is given authority to issue subpoenas, examine records, administer oaths, hear witnesses, and receive evidence. In case of contumacy or refusal to obey a subpoena, the Board may apply to the appropriate district court for an order compelling obedience (sec. 11 (1), 11 (2)).

7. *Penalties.*—No penalties are provided for noncompliance with cease-and-desist orders, demands for access to or the production of books and papers, or subpoenas to compel testimony, other than those available to the circuit courts of appeals or district courts, respectively, in proceedings to punish for contempt of their own orders.

However, in order that the Board and its agents may be protected in the conduct of their work, the act imposes a fine not to exceed \$5,000 or imprisonment not to exceed 1 year, or both, upon any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to the act (sec. 12).

## IV. THE NATIONAL LABOR RELATIONS BOARD

### A. THE BOARD

On August 24, 1935, the Senate confirmed the President's appointment of J. Warren Madden, of Pennsylvania; John M. Carmody, of New York; and Edwin S. Smith, of Massachusetts, as members of the National Labor Relations Board. Mr. Madden, a professor of law at the University of Pittsburgh, was appointed for a period of 5 years and was designated as Chairman. Mr. Carmody,<sup>1</sup> a member of the National Mediation Board, which administers the labor relations provisions of the Railway Labor Act, was appointed for a 3-year term. Mr. Smith, a member of the National Labor Relations Board, which had been created pursuant to Public Resolution No. 44, was appointed for a 1-year term.

The appointment of the three Board members became effective on August 27, 1935, and their first formal meeting took place on September 4. The most immediate problems they faced were the creation of an organization and the adoption of procedural rules and regulations. Fortunately, the Board was not confronted with the task of building an entirely new organization. The National Labor Relations Act provided for the transfer of the staff of the old National Labor Relations Board to the newly created Board. Thus there was available, except in the field of court litigation, a staff experienced in the type of work to be done by the Board and a complete regional set-up to handle cases in the field. Some refinement of this organization and some personnel changes were necessary, but the Board was able to avoid a great deal of delay in commencing to function as a result of the continuance of the previous staff. After a conference with the Washington staff and the field staff and a survey of labor-relations conditions in the various regions the Board perfected its organization and adopted rules and regulations governing the procedure before it.

### B. ORGANIZATION—WASHINGTON OFFICE

The Board created the following divisions in its Washington office: Legal, Administrative, Trial Examiner, Economic, and Publications. Certain functions and activities were assigned to each of these divisions.

The Legal Division, under the supervision of the general counsel, has charge of the legal work involved in the administration of the National Labor Relations Act. This work falls into two main sections, Litigation and Review.

The Litigation Section, headed by the associated general counsel, is responsible for the conduct of hearings before the Board and

<sup>1</sup> On Aug. 31, 1936, Mr. Carmody resigned and on Sept. 23, 1936, Donald Wakefield Smith of Pennsylvania was appointed to fill Mr. Carmody's unexpired term.



advises the regional attorneys in their conduct of hearings before the agents of the Board in the field. It represents the Board in judicial proceedings seeking to enjoin the Board from holding hearings and taking other action in cases before it, and also represents the Board in proceedings brought by it in the United States circuit courts of appeals for the enforcement of its orders, and proceedings brought by parties for the review of the Board's orders. It prepares briefs for presentation to the courts in all judicial proceedings brought by or against the Board.

The Review Section, headed by the assistant general counsel, assists the analysis of the records of hearings in the regions and before the Board in Washington. It submits to the Board opinions and advice on general questions of law and problems of interpretations of the act and the Board's rules and regulations, and in response to inquiries from the regional offices submits to the regional attorneys opinions on the interpretation of the act as applied to specific facts. In collaboration with other divisions it prepares, for submission to the Board, orders, forms, rules, and regulations, and it engages in the research incidental to the formulation of legal opinions.

In addition to the foregoing, the Legal Division exercises supervision over the legal work of the regional attorneys in the field.

The Administrative Division, under the supervision of the secretary, is responsible for the operation of the administrative, clerical, and fiscal activities of the Board, both in Washington and in the regional offices, and supervises the activities of the regional offices. The administrative work is done by the Accounts and Personnel Section, Docket Section, Files and Mails Section, Stenographic Section, and Library. Under this division falls the handling of liaison activities with other Government establishments; preparation of budget estimates and justifications; and the signing of orders, certifications, notices, etc. In addition, this Division is in charge of the correspondence and case development in the Washington office and the case development and handling of labor relations in the regional offices.

The Trial Examiners Division, under the supervision of the secretary, as acting Chief Trial Examiner, holds hearings on behalf of the Board. Members of this Division are assigned to preside over hearings on formal complaints and petitions for certification of representatives, to make rulings on motions, to prepare intermediate reports containing findings of fact and recommendations for submission to the parties, and to prepare informal reports to the Board.

The Economic Division, under the supervision of the Chief Industrial Economist, prepares the economic material necessary for use as evidence in the Board's cases, covering both the business of the particular employer involved in a case before the Board and the industry of which this business is a part. It also makes general studies of the economic aspects of labor relations for use of the Board in its formulation of policy and prepares the economic material needed for inclusion in briefs for the courts in cases where the Board is a litigant.

The Publications Division, under the supervision of the Director of Publications, makes available to the public information regarding the activities of the Board, through releases and answers to oral and

written inquiries. Copies of the Board's decisions and orders, rules and regulations, statements concerning the status of cases before the Board and its regional offices, and similar information are sent out in the form of releases issued to the press and through mailing lists.

### C. ORGANIZATION—REGIONAL OFFICES

The National Labor Relations Board retained the system of regional offices which had been in existence under the old National Labor Relations Board. Some changes in duties and additions to staff were necessitated by the change in the functions of the Board from those of the old Board. Originally, under the National Labor Board, each regional board was under the direction of a volunteer impartial chairman, assisted by representatives of labor and industry in connection with hearings and decisions, and by a paid, full-time executive secretary in connection with the administrative work. When the first National Labor Relations Board took office it abolished the position of impartial chairman, made the executive secretary a regional director, put him in complete charge of the office (sometimes assisted by a field examiner or investigator), and established panels of representatives of the public, labor, and industry from which the regional director could choose individuals to hear specific cases.

Because of the stricter legal requirements of the National Labor Relations Act and the more formal procedure required under it, the present Board decided to dispense with the volunteer services of the panels and have the work in the regions handled entirely by trained members of its own staff. At present the following division of functions exists:

The regional director is the administrative head of the office, under the supervision of the Administrative Division in Washington. He is also in charge of the labor relations work, investigating charges of commission of unfair labor practices and petitions for certification of representatives, attempting to secure compliance with the law without formal procedure, issuing complaints, or refusing to issue complaints, upon the recommendation of the regional attorney, setting dates for hearing and arranging for the holding of hearings, and holding elections as agent of the Board.

The field examiner aids the regional director in his investigations and efforts to secure compliance, in holding elections as agent of the Board, and other nonadministrative duties. Only the larger and more active regional offices have field examiners assigned to them.

The regional attorney is the legal officer in the regional office, under the supervision of the general counsel and the regional director. He advises the regional director on the desirability of issuing a complaint on the charge filed with the director, weighing the sufficiency of the evidence presented to the director or obtained by investigation. The regional attorney drafts complaints, in cases where the regional director directs the issuance of complaints. The regional attorney interviews witnesses, makes further investigation, and generally prepares cases for trial. He presents the Board's cases at hearings before trial examiners and prepares any briefs, orders, or other legal documents which may be required.

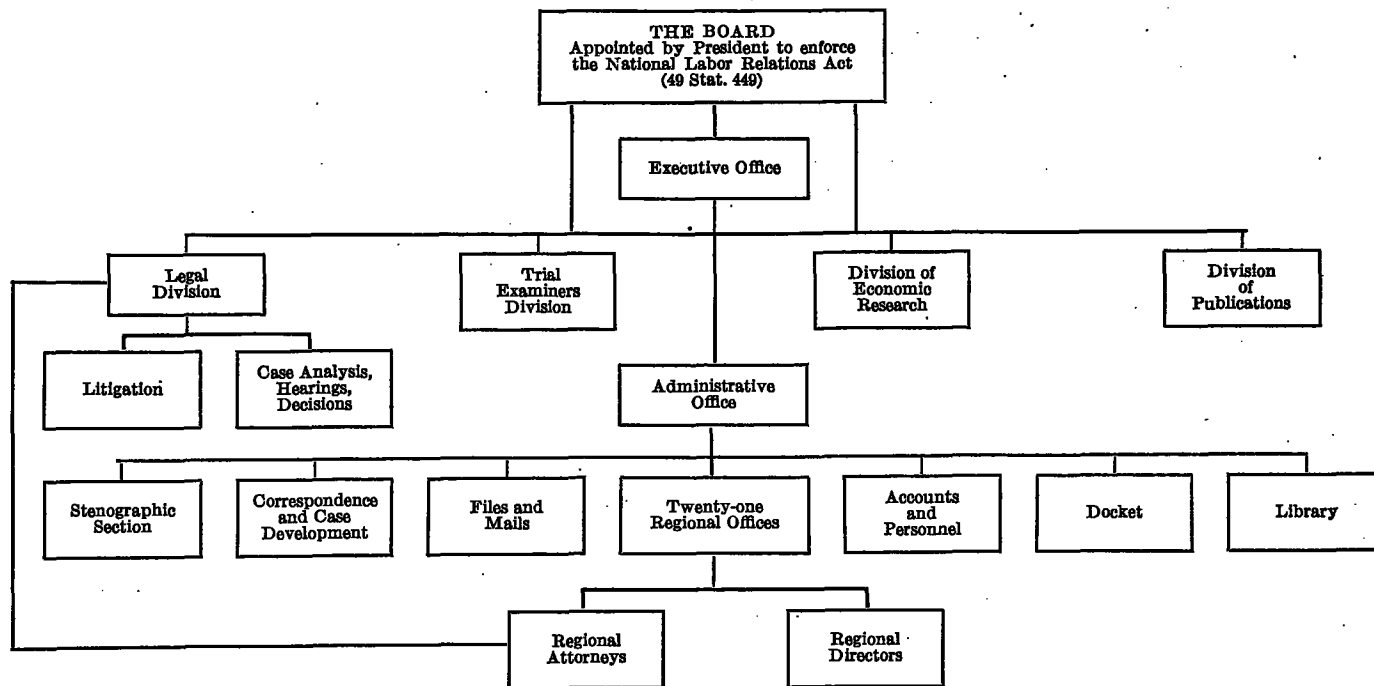
## D. REGIONAL OFFICES—LOCATION, TERRITORY, AND PERSONNEL

Region 1, 1002 Federal Building, Boston, Mass.	Maine; New Hampshire; Vermont; Massachusetts; Rhode Island; Windham, New London, Tolland, Hartford, and Middlesex Counties in Connecticut.	A. Howard Myers, Director; Edmund J. Blake, Attorney.
Region 2, 45 Broadway, New York City.	Litchfield, New Haven, and Fairfield Counties in Connecticut; Clinton, Essex, Washington, Warren, Saratoga, Schenectady, Albany, Rensselaer, Columbia, Greene, Dutchess, Ulster, Sullivan, Orange, Putnam, Rockland, Westchester, Bronx, New York, Richmond, Kings, Queens, Nassau, and Suffolk Counties in New York State; Sussex, Passaic, Bergen, Warren, Morris, Essex, Hudson, Union, Middlesex, Somerset, and Hunterdon Counties in New Jersey.	Elinore M. Herrick, Director; David Moscovitz, Attorney.
Region 3, 203 White Building, Buffalo, N. Y.	New York State, except for those counties included in the second Region.	Rev. John P. Boland, Director; Daniel B. Shortal, Attorney.
Region 4, 1432 Bankers Securities Building, Philadelphia, Pa.	Mercer, Monmouth, Ocean, Burlington, Atlantic, Camden, Gloucester, Salem, Cumberland, and Cape May Counties in New Jersey; New Castle County in Delaware; all of Pennsylvania lying east of the eastern borders of Potter, Clinton, Centre, Mifflin, Huntingdon, and Franklin Counties.	Stanley W. Root, Director; Samuel G. Zack, Attorney.
Region 5, 601 Appraiser's Store Building, Baltimore, Md.	Kent and Sussex Counties in Delaware; Maryland; District of Columbia; Virginia; North Carolina; Jefferson; Berkeley, Morgan, Mineral, Hampshire, Grant, Hardy, and Pendleton Counties in West Virginia.	Bennet F. Schauflier, Director; Jacob Blum, Attorney.
Region 6, 1030 Post Office Building, Pittsburgh, Pa.	All of Pennsylvania lying west of the eastern borders of Potter, Clinton, Centre, Mifflin, Huntingdon, and Franklin Counties; Hancock, Brooke, Ohio, Marshall, Wetzel, Monongalia, Marion, Harrison, Taylor, Doddridge, Preston, Lewis, Barbour, Tucker, Upshur, Randolph, Webster, and Pocahontas Counties in West Virginia.	Ernest Dunbar, Acting Director; Robert Kleeb, Attorney.

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| Region 7, 2102 National Bank Building, Detroit, Mich.        | Michigan, exclusive of Gogebic, Ontonagon, Houghton, Keweenaw, Baraga, Iron, Dickinson, Marquette, Menominee, Delta, Alger, Schoolcraft, Luce, Chippewa, and Mackinac Counties.   | Frank H. Bowen, Director; Garnet L. Patterson, Attorney.       |
| Region 8, 915 Guarantee Title Building, Cleveland, Ohio      | Ohio, north of the southern borders of Darke, Miami, Champaign, Union, Delaware, Licking, Muskingum, Guernsey, and Belmont Counties.  | Ralph A. Lind, Director; H. L. Lodish, Attorney.               |
| Region 9, 1004 Mercantile Library Building, Cincinnati, Ohio | West Virginia, west of the western borders of Wetzel, Doddridge, Lewis, and Webster Counties and southwest of the southern and western borders of Pocahontas County; Ohio, south of the southern borders of Darke, Miami, Champaign, Union, Delaware, Licking, Muskingum, Guernsey, and Belmont Counties; Kentucky, east of the western borders of Hardin, Hart, Barren, and Monroe Counties. | Ralph A. Lind, Acting Director; Philip G. Phillips, Attorney.  |
| Region 10, 10 Forsyth Street, Atlanta, Ga.                   | South Carolina; Tennessee; Georgia; Alabama, north of the northern borders of Choctaw, Marengo, Dallas, Lowndes, Montgomery, Macon, and Russell Counties.   | Charles N. Feidelson, Director; Mortimer Kollen-der, Attorney. |
| Region 11, 539 Architects Building, Indianapolis, Ind.       | Indiana, except for Lake, Porter, La Porte, St. Joseph, Elkhart, Lagrange, Noble, Steuben, and De Kalb Counties; Kentucky, west of the western borders of Hardin, Hart, Barren, and Munroe Counties.  | R. H. Cowdrill, Director; David Persinger, Attorney.           |
| Region 12, 519 Brumder Building, Milwaukee, Wis.             | Wisconsin, except for Douglas County; Gogebic, Ontonagon, Houghton, Keweenaw, Baraga, Iron, Dickinson, Marquette, Menominee, Delta, Alger, Schoolcraft, Luce, Chippewa, and Mackinac Counties in Michigan.  | Nathaniel S. Clark, Director; Robert R. Rissman, Attorney.     |
| Region 13, 20 North Wacker Drive, Chicago, Ill.              | Iowa; Lake, Porter, La Porte, St. Joseph, Elkhart, Lagrange, Noble, Steuben, and De Kalb Counties in Indiana; Illinois, north of the northern borders of Edgar, Coles, Shelby, Christian, Montgomery, Macoupin, Greene, Scott, Brown, and Adams Counties; Jackson, Clinton, Scott, Jones, Cedar, Muscatine, Louisa, Lee, Henry, Washington, Johnson, Des Moines, and Linn Counties in Iowa.   | L. W. Beman, Director; Harold Craneheld, Attorney.             |

Region 14, 1002 United States Courthouse, St. Louis, Mo.	Illinois, south of the northern borders of Edgar, Coles, Shelby, Christian, Montgomery, Macoupin, Greene, Scott, Brown, and Adams Counties; Missouri, east of the western borders of Scotland, Knox, Shelby, Monroe, Audrain, Calloway, Osage, Maries, Phelps, Dent, Shannon, and Oregon Counties.	Leonard C. Bajork, Director; David C. Shaw, Attorney.
Region 15, 924 Union Indemnity Building, New Orleans, La.	Louisiana; Arkansas; Mississippi; Florida; Alabama, south of the northern borders of Choctaw, Marengo, Dallas, Lowndes, Montgomery, Macon, and Russell Counties.	Charles H. Logan, Director.
Region 16, 405 Federal Court Building, Fort Worth, Texas.	New Mexico; Oklahoma; Texas.	Edwin A. Elliott, Director; Karl Mueller, Attorney.
Region 17, 932 Scarritt Building, Kansas City, Mo.	Missouri, west of the western borders of Scotland, Knox, Shelby, Monroe, Audrain, Callaway, Osage, Maries, Phelps, Dent, Shannon, and Oregon Counties; Kansas; Nebraska; Colorado; Wyoming.	George O. Pratt, Director.
Region 18, 405 New Post Office Building, Minneapolis, Minn.	North Dakota; South Dakota; Montana, east of the eastern borders of Hill, Chouteau, Fergus, Golden Valley, Stillwater, and Carbon Counties; Douglas County in Wisconsin.	N. S. Clark, Acting Director; Robert Rissman, Acting Attorney.
Region 19, 423 Federal Office Building, Seattle, Wash.	Washington; Oregon; Idaho; Montana, west of the eastern borders of Hill, Chouteau, Fergus, Golden Valley, Stillwater, and Carbon Counties; Alaska.	Charles W. Hope, Director; E. J. Eagen, Attorney.
Region 20, 1095 Market Street, San Francisco, Calif.	Utah; Nevada; California, north of the southern borders of Monterey, Kings, Tulare, and Inyo Counties.	Alice M. Rosseter, Director; Bertram Edises, Attorney.
Region 21, 205 Federal Building, Los Angeles, Calif.	Arizona; California, south of the southern borders of Monterey, Kings, Tulare, and Inyo Counties.	Towne J. Nylander, Director; Leonard D. Janofski, Attorney.

## NATIONAL LABOR RELATIONS BOARD



## V. PROCEDURE OF THE BOARD

### A. RULES AND REGULATIONS

On September 14, 1935, the Board, acting pursuant to authority granted in section 6 (a) of the act, promulgated Rules and Regulations governing its procedure. The Rules and Regulations are intended to provide a procedure which not only makes it possible for the Board to fulfill its function under the act in the most expeditious manner,<sup>1</sup> but also gives full protection to the rights of the parties.

Although in drafting the Rules and Regulations the experience of other Governmental agencies was drawn upon, the Rules and Regulations were in considerable part designed to cover situations for which there were no precedents. However, no major difficulties have arisen in the application of the Rules and Regulations, and it was found unnecessary to amend them until April 1936, when certain minor changes, mainly of a clarifying nature, became effective. (All references hereafter made are to the Rules and Regulations as amended, which are published in the Federal Reporter for Apr. 28, 1936, pp. 321-325).

Under the act, the Board has two main functions—to prevent any person from engaging in any unfair labor practice (listed in sec. 8) affecting commerce (sec. 10) and to investigate any controversy affecting commerce which has arisen concerning the representation of employees and certify the name or names of the representatives that have been designated or selected (sec. 9 (c)). The procedure under each section will be considered separately.

1. *Procedure under section 10 of the act.*—Under the act, the Board may exercise its function in preventing unfair labor practices affecting commerce only after a charge has been filed with it (sec. 10 (b)). A charge that any person has engaged in or is engaging in any unfair labor practice affecting commerce may be filed by any person or labor organization (art. II, sec. 1, Rules and Regulations).

Normally, a charge is filed with the regional director for the region in which the alleged unfair labor practice has occurred or is occurring (art. II, sec. 2, Rules and Regulations).<sup>2</sup> After a charge has been filed, it is investigated by the regional director with the assistance of the regional attorney. In the course of this investigation, the regional director interviews the person against whom the charge has been filed, and all other persons who are likely to have any knowledge of the subject-matter of the charge. All regional directors have been instructed by the Board to make their preliminary investigations of charges very thorough, so that if the charge lacks substance the person complained against (hereafter called the respondent), either on the merits or as to jurisdiction, may be spared the expense and pub-

<sup>1</sup> Experience has shown that speedy disposition of cases is vital to the effectiveness of such a statute.

<sup>2</sup> Under exceptional circumstances, the Board may permit a charge to be filed with it (art. II, sec. 37, Rules and Regulations).

licity attendant upon further proceedings. If the regional director, as a result of his preliminary investigation, concludes that the charges could not in fact be sustained, or that they are insufficient in law, he refuses to issue a complaint based thereon. In this event his action may be reviewed by the Board upon request (art. II, sec. 9, Rules and Regulations).

If, after making his preliminary investigation, the regional director concludes that the charges could be sustained by evidence, and that jurisdiction appears to exist, he attempts to secure compliance by the respondent with the requirements of the act. In doing so, his efforts are directed toward obtaining an agreement from the respondent to cease and desist, and to take affirmative action, in the manner the Board would require if the case went to hearing and the charges were found to be sustained by the evidence, and it were decided the Board had jurisdiction. This procedure has justified itself in practice. In many cases employers have ceased from engaging in unfair labor practices.

If the regional director is unable to secure compliance with the statute he issues and serves in the name of the Board a formal complaint, containing a notice of hearing before one of the Board's trial examiners (art. II, sec. 5, Rules and Regulations). The respondent has the right to file an answer to the complaint (art. II, sec. 10, Rules and Regulations), and to any amendment of the complaint (art. II, secs. 7 and 13, Rules and Regulations). Intervention may be allowed to any person or labor organization which makes a motion to that effect setting out the grounds of interest in the proceeding (art. II, sec. 19, Rules and Regulations). Motions may be made by any party, and, depending upon their nature, are ruled upon either by the trial examiner, or by the regional director (art. II, secs. 14-18, Rules and Regulations).

Except for unusual cases heard by the Board itself, hearings for the purpose of taking evidence upon complaints are conducted by trial examiners designated by the Board,<sup>1</sup> by the Chief Trial Examiner, or by the regional director. Unlike the practice followed by the old National Labor Relations Board, all hearings before trial examiners or the Board are now public (art. II, sec. 23, Rules and Regulations). Experience has demonstrated that this change was a wise one. The public hearings held under the act have proven to be educational and have served to enlighten the public about the facts concerning labor relations. The hearings have been attended not only by the workers immediately involved, but by other workers in the same and other plants, by major and minor executives of the company involved and of other companies, by the wives and relatives of the workers and executives, by economists and students of labor relations, and by the public generally. Furthermore, and in view of the general interest generated by public hearings, the proceedings have been much more adequately covered by the press than they would otherwise have been. Cases heard by the Board itself in the first instance have aroused particularly wide interest and have been fully reported in the newspapers.<sup>2</sup>

<sup>1</sup> In many cases the Board has designated one of its own members as trial examiner.

<sup>2</sup> This was true especially in *In the Matter of Pennsylvania Greyhound Lines, Inc.*, heard by the Board in Pittsburgh, Pa., on Oct. 22-26, 1935, in *In the Matter of Fruehauf Trailer Company*, heard by the Board in Detroit, Mich., on Nov. 6-8, 1935, and in *In the Matter of Jones & Laughlin Steel Corp.*, heard by the Board in Pittsburgh, Pa., on Mar. 3-6, 1936.



Witnesses appearing at hearings are examined orally under oath, as in a court of law (art. II, sec. 20, Rules and Regulations). Any member of the Board may issue subpoenas requiring the attendance and testimony of witnesses and the production of any written evidence, and any party to the proceeding may file an application for the issuance of such a subpoena (art. II, sec. 21, Rules and Regulations). Stipulations of fact may be introduced in evidence with respect to any issue (art. II, sec. 27, Rules and Regulations).

Any party to the proceeding has the right to appear at the hearing in person, by counsel, or otherwise, and participate therein (art. II, sec. 25, Rules and Regulations). The Board itself is represented at all hearings by counsel, usually the regional attorney. Inasmuch as the Board has interpreted the act as not conferring a private right of action upon the person or labor organization making the charge, but as placing upon the Board the responsibility for enforcing the public policy which the act embodies, it is the responsibility of the Board's counsel to attempt to prove the allegations of the complaint issued by the Board. The Board's attorneys, however, have been instructed not to act in the traditional spirit of prosecuting attorneys, but merely to attempt to bring forth all the evidence which has been developed in the course of the investigation and preparation of the case. In practice, and although the burden of preparing and trying cases has generally fallen on the Board's counsel, the latter have at times accepted the cooperation of counsel for the person or labor organization making the charge.

Inasmuch as the function of the trial examiner as the agent of the Board is to elicit for its consideration all the evidence bearing on the allegations of the complaint,<sup>1</sup> the trial examiner may ask questions of any witness called by any party, and may himself call witnesses for examination (art. II, sec. 24, Rules and Regulations). The Board's experience has shown that this positive participation by trial examiners in the examination of witnesses and in the elicitation of evidence has been very fruitful. A witness who is ill at ease or recalcitrant when being examined by counsel is likely to respond freely and truthfully when questioned by a patient and obviously impartial trial examiner or Board member.

The Rules and Regulations (art. II, sec. 26) merely adopt a provision of the act (sec. 10 (b)) in making it the rule in all of the Board's proceedings that "the rules of evidence prevailing in courts of law or equity shall not be controlling." Acting in the light of the legal precedents concerning similar provisions in other statutes, the Board has not interpreted this provision to mean that the rules of evidence are to be wholly disregarded, but to mean that they may be applied liberally. The Board's guide in this connection has been the statement of the Circuit Court of Appeals for the Second Circuit in *John Bene & Sons, Inc. v. Federal Trade Commission*, 299 Fed. 468:

evidence or testimony, even though legally incompetent, if of the kind that usually affects fair-minded men in the conduct of their daily and more important affairs, should be received and considered; but it should be fairly done.

<sup>1</sup> "It shall be the duty of the trial examiners to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice affecting commerce as set forth in the complaint or amended complaint" (art. II, sec. 24, Rules and Regulations).

Every effort is made by the Board and its trial examiners to conduct hearings with all the dignity and impartiality of court proceedings, without at the same time creating an atmosphere which is so formal as to inhibit participation by workers and others involved in the proceeding. However, the bitterness which customarily attends labor disputes sometimes rises to the surface in the Board's hearings. To meet such a situation, the Board and the trial examiner have power to exclude from hearings any person who may be guilty of "contemptuous conduct" (art. II, sec. 31, Rules and Regulations).<sup>1</sup> Another salutary rule, adopted after the Board had had difficulty with witnesses who are willing to tell only that part of their stories which is most favorable to their side of a case, is that if a witness refuses to answer a question which has been ruled to be proper, all of his previous testimony on related matters may be ordered stricken from the record (art. II, sec. 31, Rules and Regulations).

All parties to hearings are entitled to a reasonable period for oral argument at the close of the hearing (art. II, sec. 29, Rules and Regulations). However, except in unusual cases, such arguments are not included in the stenographic report of the hearing. The trial examiner may, if he thinks it will be helpful to him, accept written briefs (art. II, sec. 29, Rules and Regulations).

After the hearing, and after full consideration of the case, the trial examiner is required to file an intermediate report, which is served on the parties (art. II, sec. 32, Rules and Regulations). Such a report contains the trial examiner's findings of fact on the evidence, and his recommendations as to the disposition of the case, including any recommendation for affirmative action by the respondent to bring about a condition in harmony with the law (art. II, sec. 32, Rules and Regulations).

Although the act empowers the Board to use trial examiners for the purpose of conducting hearings, it makes no provision for any reports by them to the Board. However, there is no doubt of the authority of the Board to use such mechanism. In fact, an intermediate report is an additional safeguard to the respondent, in that it makes known to him the findings and recommendations of the person who took the testimony in the first place. Other considerations which prompted the adoption of this mechanism are that it aids in obtaining compliance with the requirements of the act without the necessity for a review by the Board and the taking of further formal steps. Finally, the intermediate report and the exceptions thereto sharpen the issues for consideration by the Board, and assist the Board in making proper disposition of the case.<sup>2</sup>

Any party may file with the Board, within 10 days from the date on which the intermediate report is filed, a statement of exceptions to the report or to any other part of the record (art. II, sec. 34, Rules and Regulations). If the trial examiner has found that the respondent has not engaged in or is not engaging in unfair labor practices affecting commerce, and no exceptions are filed within 10 days, the case is considered closed, except that, upon proper cause

<sup>1</sup> It has been unnecessary to take advantage of this rule to date.

<sup>2</sup> Such trial examiners' reports are used by the Federal Trade Commission, the Securities and Exchange Commission, and other governmental agencies.

shown within a reasonable period, the Board may reopen the record for further proceedings (art. II, sec. 36, Rules and Regulations).

If, in his intermediate report, the trial examiner has found that the respondent has engaged in or is engaging in unfair labor practices affecting commerce, the Board, after the time for filing exceptions has expired, may take one of several steps, whether or not exceptions have in fact been filed. It may decide the matter forthwith upon the record, or after the filing of briefs or oral argument. The Board, after examination of the record, may conclude that the record is incomplete, in which event it may require the taking of further evidence before the Board or a trial examiner (art. II, sec. 36, Rules and Regulations). Usually, the Board requires the taking of further evidence on its own initiative. However, briefs are usually presented on motion of the parties, most often upon motion made to the trial examiner. The Board does not as a rule direct the parties to come to Washington for oral argument on the record, but normally grants a request for oral argument when it is made by one of the parties.

In cases which are especially important for one reason or another; or in cases which require especially quick disposition, the Board may permit the filing of the charge with it instead of with a regional director, or may, at any stage of a proceeding in which the charge has been filed with a regional director, order that the proceeding be transferred to and continued before it (art. II, sec. 37, Rules and Regulations). In such cases, the procedure is similar to that in all other cases except that the necessity for the filing of an intermediate report is eliminated. The Board itself frequently hears cases which it has thus made its own, but may still designate, if it so desires, a trial examiner to take evidence. The Board may, however, direct the trial examiner to prepare an intermediate report even in such a case (art. II, sec. 38, Rules and Regulations).

*Procedure under section 9 (c) of the act.*—Section 9 (c) of the act provides that "Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, \* \* \* and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives." Article III of the Rules and Regulations sets forth the procedure followed by the Board in carrying out the provisions of section 9 (c) of the act. The procedure relating to hearings, witnesses, motions, and intervention is similar to that adopted by the Board in article II of its Rules and Regulations in connection with section 10 of the act, and consequently what has already been set forth concerning such subjects will not be repeated here.

Unlike the restriction placed on the Board respecting the institution of a proceeding under section 10 (b) of the act (i. e., that a charge must first be filed), section 9 (c) does not seem to prohibit the Board from instituting an investigation concerning the representation of employees on its own motion. Although the Rules and Regulations so provide (art. III, sec. 10), the Board has had no

occasion to conduct an investigation under section 9 (c) on its own motion. In fact, the Board is of the opinion that such a power shall be exercised sparingly, if at all, on the theory that if a controversy concerning representation actually exists and if its resolution will facilitate collective bargaining, one of the labor organizations involved will petition the Board to conduct an investigation.

Inasmuch as section 9 (c) is silent respecting the mechanism whereby the existence of a controversy concerning representation affecting commerce is to be brought to the attention of the Board, and since the Board felt that it should not exercise a roving commission in this regard, a procedure was adopted whereby any person or labor organization desiring the Board to investigate a controversy concerning representation could file a petition to that effect (art. III, sec. 1, Rules and Regulations). All investigations conducted by the Board pursuant to section 9 (c) have been conducted in response to petitions filed by labor organizations. As in the case of charges under section 10 (b) of the act, the Rules and Regulations require such a petition to be filed with a regional director, in this case with the regional director for the region wherein the contemplated bargaining unit exists.<sup>1</sup>

It should be noted that only an employee or a person or labor organization acting on his behalf may file a petition for investigation of a controversy concerning representation. Thus, employers of labor may not request the Board to undertake such an investigation. The reason for the exclusion of employers is that the Board felt that employers might otherwise take advantage of the Board's power to investigate under conditions which would frustrate rather than effectuate true collective bargaining.

The regional director with whom a petition has been filed conducts a preliminary investigation of the allegations contained therein in the same manner as he makes a preliminary investigation of a charge which has been filed with him under section 10. However, the Board has tentatively construed section 9 (c) to intend that a formal investigation thereunder may be instituted only by the Board. This construction requires a different procedure from that adopted under section 10 of the act, which expressly gives not only to the Board, but also to "any agent or agency designated by the Board" the power to issue complaints. Consequently, if after making a preliminary investigation of the allegations of a petition for investigation of representatives, the regional director concludes that a formal investigation pursuant to section 9 (c) should be conducted, he is given no power to institute such a formal investigation. In practice, the regional director makes a report of his preliminary investigation to the Board, and if he has concluded that the case is a proper one for the exercise by the Board of its power under section 9 (c), he recommends that the Board direct that a proceeding be instituted. If it appears to the Board, on the basis of the preliminary investigation and recommendation of the regional director, that a proceeding be instituted,

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<sup>1</sup> Where the contemplated bargaining unit exists in 2 or more regions (as in the case of a transportation or communication company, or of an employer who operates more than 1 plant in different parts of the country), the petition may be filed with the regional director for any of such regions (art. III, sec. 1, Rules and Regulations). In exceptional cases the Board may permit a petition to be filed with it (art. III, sec. 10, Rules and Regulations).

the Board so directs and authorizes the regional director to conduct the investigation, and to provide for an appropriate hearing upon due notice (art. III, sec. 3, Rules and Regulations).

If, after his preliminary investigation, the regional director concludes that a formal investigation should not be conducted, he sends the results of his preliminary investigation to the Board with a recommendation that the Board take no action on the petition. In this event, the regional director notifies the person or labor organization filing the petition of his action, and such person or labor organization may pursue the matter further directly with the Board.

Section 9 (c) provides that any hearing held thereunder may be held "in conjunction with a proceeding under section 10" of the act. Several such hearings have in fact been conducted by the Board. Most of such cases involve a complaint that the employer has refused to bargain collectively with the same labor organization which has filed the petition under section 9 (c). The reason that it is sometimes necessary for a labor organization to file a petition under section 9 (c) as well as a charge that there has been a refusal to bargain collectively is that it may be doubtful whether, in the hearing on the complaint based on the charge, it can definitely be proven that the labor organization represents a majority of the employees in an appropriate unit. If a joint hearing is held, and it is shown that the labor organization does in fact represent a majority, the petition is then dismissed and further proceedings are taken on the complaint; if it cannot be shown that the labor organization represents a majority, the complaint is dismissed and an election is directed to determine the representation of the employees. Thus duplication is avoided and the proceedings expedited.

In a proceeding under section 9 (c) of the act, the parties do not include only the petitioner and the employer, but also "any known individuals or labor organizations purporting to act as representatives of any employees directly affected by such investigation" (art. III, sec. 3, Rules and Regulations). This means that, as part of his preliminary investigation, the regional director must obtain the names of all individuals or labor organizations which may be affected by the investigation. When the regional director serves the notice of the hearing held in connection with the investigation, he serves all such individuals or labor organizations, thereby automatically making them parties to the proceeding (art. III, sec. 3, Rules and Regulations). In the event that any such individual or labor organization is not served, intervention may of course be allowed as in any other case.

The powers and duties of a trial examiner in a hearing held under section 9 (c) are, in general, similar to those he exercises in hearings under section 10. The role of the Board's counsel is, however, somewhat different. In an investigation under section 9 (c), the responsibility for developing the facts concerning the controversy rests upon the rival claimants. Counsel for the Board is responsible only for presenting evidence which will sustain the constitutional and statutory jurisdiction of the Board.

After a hearing for the purpose of taking evidence in an investigation under section 9 (c), the complete record is forwarded to the Board. Unlike the procedure in cases arising under section 10 of the

act, the rules and regulations do not provide for the rendering of an intermediate report by the trial examiner. However, in order to have the benefit of the trial examiner's experience with the case, the Board's practice is to obtain from the trial examiner an informal report setting forth his findings and recommendations; this report is not served on the parties.

After the Board has considered the record as thus made, it is prepared to direct the taking of a secret ballot in order to determine whom the employees desire as their representative. In the normal case, this is the next step taken by the Board. However, if at the hearing before the trial examiner evidence was developed to show whom the employees have already chosen (as, for example, by the membership rolls of a union), the Board proceeds to an immediate certification of representatives, thus concluding the investigation. Before taking either step, the Board may allow briefs to be filed or may hear argument on the record, as in proceedings under section 10 (art. III, sec. 8, Rules and Regulations).

When the Board directs an election, it does so by issuing a so-called Direction of Election, which embodies the conditions under which the election will be held—by which of the Board's agents, on what date and at what place, and a description of the employees eligible to vote. In order to expedite the determination of representatives, the Board has in many cases issued a Direction of Election without at the same time issuing a decision embodying its findings of fact and conclusions of law. However, in such cases, and in order fully to inform the parties of the basis for its action, the Board issues a decision either with the certification which is made after the election has been conducted or at some time before the certification is made.

Elections directed by the Board are usually conducted by the regional directors as agents for the Board. In cases where the list of employees eligible to vote in the election are not already part of the record, or cannot otherwise be obtained, the Board subpoenas such lists from the employer. After conducting the election, the regional director prepares and serves an intermediate report containing a tally of the ballots, with his findings and recommendations (art. III, sec. 9, Rules and Regulations). Any party may thereafter file with the regional director any objection to the election or to the intermediate report, and if it appears to the regional director that any such objection raises a substantial and material issue, he issues a notice of hearing on such objection before a trial examiner. After the hearing the trial examiner makes a report with findings and recommendations, which is transmitted to the Board, together with the record in the case. After consideration of the entire record, the Board either certifies the name or names of the representatives who have been selected, or, if the record does not warrant certification, takes such other steps as it deems necessary (art. III, sec. 9, Rules and Regulations).

In order to expedite proceedings under section 9 (c) of the act the Board has permitted the holding of so-called consent elections to determine representatives. Such elections are conducted with the consent of all parties involved, such consent including an agreement concerning all issues involved in the election—the eligible employees, the form of the ballot, etc.

## VI. WORK OF THE BOARD

### A. STATISTICAL SUMMARY

Although the Board was appointed on August 27, 1935, it did not begin to accept charges or petitions until the beginning of October. During the first month of its existence it was engaged in an analysis and revision of its regional office set-up, the augmentation of its staff in preparation for the new type of work to be done, a determination of many questions of policy, and the formulation and adoption of its Rules and Regulations, covering the procedure to be followed in the matters coming before it.

Upon completion of this preparatory work, the Board authorized its regional offices to accept charges of unfair labor practices and petitions for investigation and certification of representatives. Because of the new methods of procedure instituted by the Board, methods simplified as much as possible within the requirements of the act, formal charges were not submitted to the regional offices in any great numbers until about two months after the Board took office.

Two types of cases were submitted—charges that employers had engaged in one or more of the unfair labor practices designated as such by section 8 of the act, and petitions for investigation and certification of representatives of employees. In the period ending June 30, 1936, the regional offices received 1,065 charges and petitions, involving a total of 236,060 employees, and three charges and petitions, involving 4,805 employees, were filed directly with the Board.

Two hundred and eighty-six of the cases instituted by the filing of charges and petitions, in which 68,761 employees were involved, were pending on June 30. In addition to these there were 44 cases, involving 27,792 employees, in which the courts had issued orders restraining the Board from further action. The remaining 738 cases, involving 144,312 employees, and amounting to 69.1 percent of the total, had been disposed of in one of several ways.

Upon receipt of a charge or a petition, the regional director, after appropriate investigation, had to determine whether the unfair labor practice or the question concerning representation affected commerce sufficiently to warrant his issuing a complaint, where a charge had been filed, or, in a representation case, to warrant his recommending to the Board that an investigation and hearing, pursuant to section 9 (c) of the act, be ordered. The director also had to determine, in complaint cases, whether the facts alleged by the party filing the charge constituted an unfair labor practice within the meaning of section 8 of the act, and in representation cases, whether a bona fide question or controversy existed within the meaning of section 9 (c). If the director decided that the facts revealed by his investigation did not warrant the institution of formal proceedings under the act, he so informed the party filing the charge or petition, and gave such party an opportunity to request its withdrawal. Besides the withdrawals occurring in such cases, some charges and petitions were withdrawn as a result of a settlement of the issues in disputes reached directly by the parties without the intervention of the regional office. In a few instances withdrawals of charges or petitions resulted from the transfer of the cases to other agencies of the Government in whose jurisdiction the matters more

properly belonged. Two hundred and one cases, almost one-fifth of the total number of cases received, and involving 65,211 employees, were closed as a result of the withdrawal of charges or petitions by the parties filing them.

If the parties filing the charges or petitions did not choose to withdraw them when informed by the regional directors that in their opinion no further action was warranted, the directors issued orders formally refusing to issue complaints, or recommended to the Board, in representation cases, that no order for investigation and hearing be made. As a result of such action by the regional directors, 113 cases, involving 21,781 employees, were closed. In this manner 10.6 percent of the total charges and petitions received were disposed of.

In some instances charges or petitions involving the same employer were filed in more than one regional office. Most often such charges or petitions were consolidated, so that one regional office handled all the matters which involved the same employers. Sometimes charges or petitions were closed by transfer from one regional office to another in order to secure a more expeditious or expert handling of a particular case. In this group there were 19 cases, involving 5,915 employees.

The Board issued decisions in 68 cases involving 10,745 employees, and in six additional cases, the trial examiners issued intermediate reports finding either that the Board had no jurisdiction or that no unfair labor practices were committed. These latter six cases involved 306 employees. Table I sets forth the various forms the Board's decisions took. In the cases in which the intermediate reports were issued, the failure of the parties filing the charges to file exceptions to the trial examiner's reports resulted in the closing of the cases.

Table I shows the disposition of all charges and petitions received by the Board during the period ending June 30, 1936.

TABLE I.—Disposition of all charges and petitions received

	Number of—		Percentage of—	
	Cases	Workers involved	Total cases	Cases closed
By withdrawal of charge or petitions.....	201	65,211	18.8	27.2
By dismissal of petitions before hearing or refusal to issue complaint.....	113	21,781	10.6	15.3
By transfer or consolidation.....	19	5,915	1.8	2.6
By settlement.....	331	* 40,354	31.0	44.9
By intermediate report finding no violation.....	6	306	.5	.8
By issuance of decisions:				
Cease and desist orders.....	56	<sup>b</sup> 5,514	-----	-----
Certifications.....	6	2,474	-----	-----
Dismissal of complaints or petitions.....	5	2,057	-----	-----
Refusal to certify.....	1	700	-----	-----
Total.....	68	10,745	6.4	9.2
Injunctions issued restraining Board from further action.....	44	27,792	4.1	-----
Cases pending.....	236	68,761	26.8	-----
Total.....	* 1,068	240,865	100	100

\* 375 employees were involved in a settlement of one allegation in a case, although the case still remains pending.

<sup>b</sup> An additional 4,800 employees were covered by the cease and desist orders, but they have already been included in the representation cases.

\* 1,065 charges and petitions, involving 236,289 workers, were received by the regional offices. Three charges and petitions, involving 4,805 workers, were received directly by the Board, see note 1, p. 33, *infra*.



## B. SETTLEMENTS

Almost 45 percent of all the cases disposed of were closed as a result of settlement of the disputes involved. Three hundred and thirty-one, being 31 percent of all the cases received, and involving 40,354 employees, were closed in this manner. In all of these cases, a member of the Board's staff participated directly in securing the settlement, and the terms of settlement were in conformity with the provisions and policy of the act. In effect, substantial compliance with the act was secured by the settlements in these cases.

There is no way of avoiding a certain amount of delay in the formal procedure before the Board and the courts required under the act. The Board has attempted in every way possible to reduce the time element in the procedure before it to a minimum, but it has no control over the time which elapses as a result of the review of its orders by the courts. Therefore the ability of the regional offices to secure settlements before formal action became necessary has meant the rapid removal from the area of possible industrial conflict certain disputes which by their nature are likely to lead to economic strife. The benefits of such settlements have accrued to the employers and employees directly involved, as well as to the general public. There is no need to argue the value of such settlements as alternatives to strikes or other forms of industrial warfare, with consequent burdens upon commerce, nor to point out the elimination of economic waste, of privation and suffering, and of inconvenience and loss, to the public as well as to the parties directly and indirectly affected, which is achieved by the substitution of peaceful settlements for strikes.<sup>1</sup>

In some of the settlements secured by the Board during the period ending June 30, 1936, intervention by the Board took place before the disputes involved had advanced to the stage of strikes or threatened strikes. However, the issues in these disputes, discrimination, and union recognition and collective bargaining, were the same issues which have caused a large percentage of the strikes in the United States for many years, and we may safely assume that a large proportion of these disputes would have resulted in strikes but for the intervention of the Board. In 72 of the cases in which settlements were secured, strikes were actually in progress, in 52 cases strikes had been threatened; in the remaining cases, the disputes had not yet reached the stage of strike or threatened strike.

Table II shows the types of settlement reached in these cases.

TABLE II.—*Nature of settlements reached between workers and employers in National Labor Relations Board cases*

Nature of settlements	Number of cases	Number of workers involved
Recognition of workers' representatives.....	108	17,990
Reinstatement.....	91	4,721
Reinstatement and recognition.....	51	5,738
Reinstatement and improved working conditions.....	17	1,973
Consent election.....	24	5,610
Arbitration.....	4	439
Other.....	36	3,883
Total.....	331	40,354

\* This includes abolition of company unions, agreement to cease interference with employees' exercise of freedom of self-organization, posting of notices to this effect, etc.

<sup>1</sup> The word "strike" is used to include both strikes and lockouts.

## C. INFORMAL ACTIVITIES

The regional directors, as a result of their position in the territories within which they operated, have been frequently consulted by employers and employees regarding labor relations problems, and have thus been able to prevent many labor disturbances or violations of the act which might otherwise have occurred. In addition, many labor disputes which never became formal cases have been adjusted by the regional directors. Sometimes this necessitated nothing more than a telephone call, or the arranging of a conference between the parties. At other times, it involved persuading the parties to arbitrate their disputes or to accept some other solution of their problems. In many of the cases disposed of in this manner, the jurisdiction of the Board was doubtful, and therefore no formal charges were filed, but the value to the community of a settlement of the dispute was clear. This work has been an important contribution to the industrial peace of the various regions involved, and has effected considerable savings, in terms of industrial wealth. No statistical record has been kept of this phase of the Board's work, and it is not reflected in the statistics set forth above.

## D. COOPERATION WITH SENATE INVESTIGATION

The Board in September 1935 instituted a limited inquiry into labor detective agencies and allied means of evasion or frustration of the principles of the law. The Board's inquiry had in mind the usefulness to the Board, in the preparation of particular cases, of general information upon the subject and also the value in possible legislative purposes.

The first cases before the Board proved the advisability of the inquiry, which it has assigned to one of its industrial economists. On the legislative side, a subcommittee of the Senate Committee on Education and Labor, under the chairmanship of Senator La Follette, requested the Board to present the results of its inquiry at public hearings, April 10 to 23, 1936, on Senate Resolution 266. Testimony for the Board and given by agents of the Board comprised more than half the record (344 pages) of these hearings, which resulted in the passage of Senate Resolution 266 on June 6, 1936.

This record contains the essentials of the Board's own inquiry, including the findings on labor espionage in Board cases; studies of the characteristics of labor detective agencies; the finances of espionage; company unions formed by labor detectives; lists of such agencies and their industrial employers; records of union's expulsions of spies in 1935-36; typical vigilante groups and pseudo-patriotic associations; organized strike-breaking and plant munitioning; the usurpation of police powers by "deputized" agents of industrialists, 1914-36; etc.

The Board continued its own inquiry and its cooperation with the Senate investigation was requested by the Senate Committee in accordance with the Senate Resolution authorizing the investigation, enabled the Board to afford cooperation, particularly in placing certain facilities of its regional offices at the disposal of the Senate committee.

## VII. COMPLAINT CASES

### A. ANALYSIS OF CHARGES RECEIVED

Complaint cases are those cases which are instituted by the filing of charges that employers have engaged in unfair labor practices affecting commerce within the meaning of sections 8 and 10 of the act. During the period between August 27, 1935, and June 30, 1936, 865 charges, involving 160,346<sup>1</sup> employees, were filed with the regional offices or directly with the Board.<sup>2</sup>

Section 8 of the act lists five types of employer activity which are designated as unfair labor practices. Subsection 1 of this section so designates employer activity which interferes, restrains, or coerces employees in the exercise of the rights enumerated in section 7 of the act, and the Board has ruled that an employer who engages in any of the unfair labor practices described in subsections 2, 3, 4, or 5 of section 8 has, by so doing, interfered with, restrained, or coerced his employees in the exercise of their rights as defined in section 7, and has thus engaged in an unfair labor practice within the meaning of section 8 (1). Therefore all 865 of the charges received by the Board alleged an unfair labor practice within the meaning of section 8 (1), but in only 22 cases was this the sole allegation.

Section 8 (3), which prohibits discrimination because of union activity, was joined with section 8 (1) in 316 cases; section 8 (5), which deals with refusal to bargain collectively, was joined with section 8 (1) in 185 cases; section 8 (2), which prohibits domination or interference with the formation or administration of labor organizations (the "company union" section), was joined with section 8 (1) in 32 cases; section 8 (4), which prohibits discrimination because of filing charges or testifying under the act, was joined with section 8 (1) in 2 cases.

There were many cases in which allegations were made that employers had engaged in more than one unfair labor practice, in addition to that described in section 8 (1). Thus in 135 cases, subsections 1, 3, and 5 of section 8 were involved; in 79 cases, subsections 1, 2, and 3 were involved; in 46 cases, subsections 1, 2, 3, and 4 were involved; subsections 1, 2, and 5 were involved in 29 cases; all five subsections were involved in 7 cases; subsections 1, 3, and 4 were involved in 5 cases; subsections 1, 2, 3, and 4 were involved in 4 cases; subsections 1, 3, 4, and 5 were combined in 2 cases; and subsections 1, 4, and 5 were combined in 1 case.

Of the total number of 865 charges, 594 contained allegations that employers were engaged in unfair labor practices within the meaning of section 8 (3) of the act. Similarly 405 of the charges contained allegations directed to section 8 (5) of the act. Section 8 (2) was involved in 197 of the charges, and 21 charges alleged violation of section 8 (4) of the act.

Table III shows the various subsections of section 8 of the act set forth in the charges arising in the different regional offices.

<sup>1</sup> In a number of cases, charges and petitions were filed relating to the same group of employees. In those cases where the number of employees involved has been included to the amount involved in complaint cases, this number has been omitted from the total of those involved in representation cases, and vice versa.

<sup>2</sup> Only two charges were filed directly with the Board. In these cases the Board granted special permission, under the Rules and Regulations, for such filing.

TABLE III.—Analysis of charges filed

Num- ber of cases	Subsections of section 8 involved										"Other" analyzed									
	1	2	3	4	5	1 and 3	1 and 5	1, 3, and 5	1, 2, and 3	1, 2, 3, and 5	Other	1	1 and 2	1, 2, and 4	1, 3, and 4	1, 2, 3, and 4	1, 3, 4, and 5	1, 2, 3, 4 and 5	1, 4, and 5	
Board.....	2	2	2						2											
Region.....																				
1.....	63	15	48		24	20	11	8	6	5	4	2	4							
2.....	119	26	51	1	69	33	30	27	12	3	3	2	2	1						
3.....	23	6	17		17	4	3	10		3	6	2	2							
4.....	77	14	46		38	29	25	7	6	4	7	2	2							
5.....	24	11	20	3	16	10	13	2	4	1	2	2	1							
6.....	29	3	21		13	9	9	7	1		2	3	2							
7.....	17	3	12	2	17	3	1	5	4	1	7	3	1							
8.....	34	9	19		12	13	6	2	4		2	2	3							
9.....	30	11	21	1	14	8	12	6	4	2	7	3	3							
10.....	88	16	67	3	36	40	19	11	6	8	8	1	1							
11.....	31	13	17	1	17	6	11	7	4	2	2	2	2							
12.....	26	12	38		17	6	11	4	4		3	6	2							
13.....	51	13	33	4	26	19	11	8	4	3	6	2	2							
14.....	15	6	12		2	7	1	1	1	1	4	2	2							
15.....	32	5	28		7	21	1	4	1	1	4	2	2							
16.....	22	3	15	2	14	7	7	4	1	1	3	2	2							
17.....	30	9	20	3	7	12	4		6		8	2	2							
18.....	11	1	7		5	4	2	2		1	3	2	2							
19.....	40	13	32		20	12	6	9	3	5	1	1	2							
20.....	22	2	13		6	13	2	3	3	2	3	3	2							
21.....	79	13	38		43	27	31	8	3		10	1	2							
Total.....	865	197	594	21	405	316	185	135	79	46	104	22	32	2	29	5	4	7	1	

## B. DISPOSITION OF COMPLAINT CASES

These cases fall into three main categories—cases closed before the issuance of complaints, cases disposed of after the issuance of complaints, and cases pending. Table IV shows in detail the subdivisions within these categories.

TABLE IV.—*Disposition of all complaint cases*

	Number of—		Percentage of—	
	Cases	Workers involved	Total cases	Cases in category
<b>Cases disposed of before issuance of complaint:</b>				
By settlement.....	240	25,966	27.8	45.2
By withdrawal of charge.....	183	37,772	19.4	31.6
By refusal to issue complaint.....	108	15,681	12.5	20.3
By transfer.....	13	1,779	1.5	2.5
By consolidation.....	2	*1	.2	.4
<b>Total disposed of before issuance of complaint.....</b>	<b>531</b>	<b>81,199</b>	<b>61.4</b>	<b>100.0</b>
<b>Cases disposed of after issuance of complaint:</b>				
By settlement before hearing.....	18	1,365	2.1	17.1
By settlement during hearing.....	6	98	.7	5.7
By settlement after hearing.....	13	2,119	1.5	12.4
By dismissal after hearing by Board or trial examiners.....	9	2,199	1.0	8.6
By withdrawal of charge after hearing.....	3	231	.3	2.9
By cease-and-desist orders issued by the Board.....	56	5,514	6.5	53.3
<b>Total disposed of after issuance of complaint.....</b>	<b>105</b>	<b>11,526</b>	<b>12.1</b>	<b>100.0</b>
<b>Cases pending:</b>				
Hearings to be held.....	135	36,725	15.6	58.9
Hearings prevented by injunction.....	30	17,487	3.5	13.1
Decisions of Board pending.....	48	11,934	5.5	21.0
Intermediate reports pending.....	16	1,475	1.9	7.0
<b>Total cases pending.....</b>	<b>229</b>	<b>67,621</b>	<b>26.5</b>	<b>100.0</b>
<b>Total complaint cases.....</b>	<b>865</b>	<b>*160,346</b>	<b>100.0</b>	<b>-----</b>

\* See note 1, p. 33, supra.

1. *Cases closed before issuance of complaint.*—Of the 865 complaints received before June 30, 1936, 531, or 61.4 percent, involving 81,199 employees, were closed before formal complaints were issued. About 45 percent of this group were closed by settlement, slightly more than 30 percent were closed by withdrawal of the charges by the parties filing them, and about 20 percent were closed by the refusal of the regional director to issue complaints. The balance were closed by transfer or consolidation.

Settlements before issuance of complaint accounted for the closing of 240, or 27.8 percent of the complaint cases, involving 25,966 employees. Most of these settlements provided for recognition of the representatives of the employees, or reinstatement of discharged employees, or a combination of these two. Such settlements had the direct effect of securing compliance with the act, and removed from the area of dispute two of the most frequent causes of strikes. Some of the settlements provided for reinstatement of discharged employees plus improved working conditions, and a few provided for arbitration of the issues. Some of the disputes were settled by agreement to have an agent of the Board conduct a consent election, and others were settled by agreement to cease interfering with the em-

ployees' right to self-organization, or the abolition of company unions. From the nature of the settlements it can be seen that no compromise was made with the provisions of the act in order to settle the disputes which were involved in the cases brought before the Board.

In 168, or 19.4 percent of the cases in which charges were filed, these charges were withdrawn before formal action was taken by the Board or its agents. In a few cases, the parties settled their controversies without the intervention of the Board. In most of these cases, the charges were withdrawn upon the advice of the regional directors, because of the lack of jurisdiction. This group of cases, involving 37,772 employees, amounted to 31.6 percent of the cases closed before issuance of complaints.

Of the remaining 123 cases in this category, 108, or 12.5 percent of all complaint cases, were closed by the formal refusal of the regional directors to issue complaints. Such refusals were based upon the absence of jurisdiction of the Board because the unfair labor practices did not affect commerce within the meaning of the act, or because the facts alleged were not unfair labor practices within the meaning of section 8 of the act. In each of these cases, which together amounted to 20.3 percent of the cases closed before issuance of complaints and involved 15,681 employees, the parties filing the charges were advised by the regional director that they could secure a review of his action by the Board by simply sending to the Board a request for such review.

Fifteen cases, involving 1,780 employees, were closed by transfer to other agencies or by consolidation with other cases.

*2. Cases disposed of after issuance of complaint.*—One hundred and five, or 12.1 percent of the complaint cases received, involving 11,526 employees, fall within this category. About 35 percent of this number were closed by settlement, either after hearings were scheduled, during the hearings, or after the hearings were concluded and before decisions were rendered. Approximately 11 percent were dismissed by intermediate reports of trial examiners or Board decisions, or were withdrawn by the parties filing the charges. The Board has issued cease and desist orders in the remaining 53.3 percent of the cases in this group.

In 37 of these cases, or 4.3 percent of all complaint cases received, involving 3,582 employees, settlements were reached. The same principles which controlled the regional directors in their efforts to secure settlements before complaints were issued prevailed in these cases. Eighteen of the cases were settled after the regional directors had issued complaints but before hearings were actually held. Six of the cases were adjusted during hearings, and the remaining 13 were settled after the conclusion of the hearings.

In 6 of the 9 cases dismissed after hearing, the trial examiners issued intermediate reports finding either that the Board had no jurisdiction because the unfair labor practices did not affect commerce as defined in the act, or that the employer had not engaged in any unfair labor practices within the meaning of section 8 of the act. The parties who filed the charges in these cases did not avail themselves of their right to file exceptions to the intermediate reports, and the cases were therefore closed. In the other three cases,

the Board issued decisions dismissing them. In each of these cases the question involved related to the right to represent certain employees, and the Board, for reasons set forth in the decisions, refused to take jurisdiction over the controversies.<sup>1</sup> There were 2,199 employees involved in these nine cases.

There were three cases, involving 231 employees, in which the parties filing the charges decided to withdraw these charges after hearings had been held and before decisions had been rendered. As a result of these withdrawals the cases were closed.

In 56 cases, 6.5 percent of all the complaint cases received, and involving 5,514 employees, the Board has issued decisions finding that the respondents have engaged in one or more unfair labor practices affecting commerce, and appropriate cease and desist orders. These cases have been included in the group of "cases disposed of after issuance of complaint" because the Board has taken its final action as a quasi-judicial agency with regard to them. The act provides that where its cease and desist orders are not obeyed, the Board can petition the United States Circuit Court of Appeals for orders enforcing its cease and desist orders. Since there is, however, a difference between the Board's role in hearing cases and issuing decisions, and its role in seeking enforcement of its orders in court, it was deemed desirable to separate the Board's functions in these regards and consider the issuance of decisions as the final action of the Board, for the purposes of chapters VI, VII, and VIII of this report.

In only one case has there been compliance with the Board's cease and desist order. In a number of the remaining cases petitions for enforcement have been filed in the various circuit courts.<sup>2</sup> This record of noncompliance is not surprising since, in most cases where the employer involved was cooperative and desirous of conducting himself in harmony with the policy of Congress as set forth in the act, a settlement was reached and it became unnecessary for the Board to issue a decision. It is worth noting that in 277, or 32.1 percent, of the complaint cases settlements of the disputes were achieved, while in only 56, or 6.5 percent of such cases it was necessary to issue cease and desist orders. We may safely assume that after the constitutionality of the act has been tested in the Supreme Court of the United States there will be a large increase in the number of cases in which there is compliance with the Board's decisions.

3. *Cases pending.*—On June 30, 1936, there were pending 229 cases, 26.5 percent of all complaint cases received, involving 67,621 employees. These cases were in various stages of development. The largest group, listed in table IV as "Hearings to be held", consisted of 135 cases, in which 36,725 employees were involved. This group of cases amounted to 15.6 percent of the total number of complaint cases received, and about 59 percent of the pending cases. In some of the cases, charges had just been filed with the regional offices. Others were in the process of investigation, a process which might

<sup>1</sup> These three cases are the *Acton Fisher Tobacco Co. case*, 1 N. L. R. B. 604, the *Brown-Williams Tobacco Corporation case*, 1 N. L. R. B. 604, and the *Aluminum Co. of America case*, 1 N. L. R. B. 530.

<sup>2</sup> For a more detailed account of this phase of the Board's activities, see chapter IX, *infra*.

lead to the issuance of complaints, or refusal to do so, or to withdrawal of the charges. In a number of these cases settlement negotiations were being carried on, in others withdrawal of charges was being considered by the parties filing them. Complaints had been issued and hearings scheduled in several of the cases in this group.

In addition to these cases, there were 30 cases, involving 17,487 employees, in which the regional directors had issued complaints and scheduled hearings, but in which the respondents had prevented the hearings by court action. In these cases, which amounted to 3.5 percent of all complaint cases and about 13 percent of the pending cases, the employers had secured temporary restraining orders or temporary injunctions enjoining the Board or its agents, or both, from proceeding further with the cases.<sup>1</sup> Further action in these cases will await the outcome of this litigation.

On June 30, 1936, intermediate reports were in the course of preparation in 16 cases which had been heard by trial examiners before that date, and 48 cases were awaiting decision by the Board. In these 64 cases, 13,409 employees were involved. The cases awaiting intermediate reports or Board decisions amounted to 7.4 percent of all complaint cases and 28 percent of the cases pending.

### C. HEARINGS AND INTERMEDIATE REPORTS

Most hearings were conducted by trial examiners, although a few cases were heard by the Board itself. In all of the complaint cases heard by trial examiners, they issued intermediate reports except where the Board issued orders transferring the cases to itself before hearings were held, or after hearings, but before intermediate reports were issued. In such cases the trial examiners hearing the cases did not issue intermediate reports except by express direction of the Board. During the period ending June 30, 1936, trial examiners conducted 145 hearings and the Board conducted 7 hearings in complaint cases. The trial examiners issued intermediate reports in 69 of the cases heard by them, and 16 such reports were pending on June 30.

When cases arose in the regional offices, they came before the Board either by its order transferring the cases, by the filing of exceptions to the intermediate reports of the trial examiners by any of the parties to the proceedings, or by the failure of respondents to comply with the recommendations contained in the intermediate reports. There was a total of 119 cases thus transferred to the Board, 65 of these by Board order, 45 by exceptions to intermediate reports, and 9 by respondent's failure to comply with the trial examiner's recommendations.

Table V is a regional break-down of the disposition of complaint cases and hearings held.

<sup>1</sup> A detailed discussion of these cases will be found in chapter IX, *infra*.



TABLE V.—*Complaint cases by regions*

Origin of cases	Number of cases	Number of workers	Disposition before issuance of complaint					Cases in which hearings were held	Intermediary reports	Cases transferred to Board				Disposition of cases heard				Hearings pending	Cases transferred to Board; decisions pending						
			Settlement	Withdrawal of charge	Refusal to issue complaint	Transferred*	Consolidated			Settled after issuance of complaint and before hearing	Trial examiner	Board	Issued	Pending	Total	On exception	No compliance			Board order	During hearing	After hearing	Dismissed	Withdrawn	Case and desist order issued
Board Region:	2	5							2																
1.....	63	11,286	12	11	10				16	6	3	9	5					3		1	2	11	4	4	
2.....	119	21,633	43	24	16				22	12	2	15	7	3	3			3	2		4	9	5	5	
3.....	23	8,164	7	3	3				4	2	2	4	1					1			3	4	2	1	
4.....	77	6,583	26	15	9				17	5	3	9	3	3	2			1	2	8	7	7	1	1	
5.....	24	1,700	4	2	2				13	10	2	10	4					2	1	5	3	3	3	1	
6.....	20	2,679	7	8	2				5	1		5	2	1				2	1	3	3	3	3	1	
7.....	17	10,497	3	3	3		1		6	2		4	3					2		1	4	3	2	2	
8.....	34	8,222	9	4	3				2	3	5	5	2					1	1	1	4	6	8	2	
9.....	30	3,365	1	12	2				6				3						2		1	6	6	1	
10.....	88	24,194	19	10	20				4	2	6	21	1					1	1	1	3	7	1	1	
11.....	31	9,760	9	6	4				4	1		6	1					1			1	4	4	1	
12.....	26	2,145	11	6					7	2		1	1					1			3	7	1	1	
13.....	51 <sup>c</sup>	7,833	9	24	7				1	1	2	1	3					1			1	4	4	1	
14.....	15	7,415	5	5					4	3	3	1	1								1	2	2	2	
15.....	32	5,234	11	6	6				1	1	6	2	1								1	7	7	1	
16.....	22	1,218							4												1	2	3	1	
17.....	30	6,616	1	8					2	1	1	6	2								1	2	3	1	
18.....	11	807							2												1	2	1	1	
19.....	40	10,049	13	6	4				2		4	3	2					2			1	2	2	1	
20.....	22	1,182	5	11	3				3	1	3	2	1								1	2	9	1	
21.....	79	9,139	47		8				1													9			
Total.....	865	160,346	240	168	108	13	2	18	145	69	16	119	45	9	65	6	13	9	3	56	135	30	4	4	

\* To other regions or other governmental agencies.

<sup>c</sup> Two cases consolidated.

## VIII. REPRESENTATION CASES

All cases initiated by the filing of a petition, pursuant to section 9 (c) of the act, requesting an investigation and certification of representatives of employees, are called representation cases. During the period ending June 30, 1936, 202 petitions, involving 75,719<sup>1</sup> employees, were filed with the regional offices, and one petition, involving 4,800 employees, was filed directly with the Board in Washington, special permission for such filing having been granted pursuant to the Board's Rules and Regulations.

### A. DISPOSITION OF CASES RECEIVED

The representation cases are divided into "closed" and "pending" cases, and the "closed" cases are divided into two groups—those closed before hearing and those closed after hearing. Of the closed cases, 44.3 percent were finally disposed of before hearings were necessary, while 5.9 percent were closed after hearings. The balance, 49.8 percent, were pending on June 30, 1936. Table VI sets forth the disposition of these cases in detail, and shows the number of workers involved in each group of cases.

TABLE VI.—Disposition of all representation cases

	Number of—		Percentage of—	
	Cases	Workers involved	Total cases	Cases in category
<b>Cases closed before hearing:</b>				
By withdrawal of petition.....	29	27,172	14.3	32.2
By dismissal of petition.....	5	6,100	2.4	5.6
By transfer.....	4	4,135	2.0	4.4
By settlement:				
(a) Consent elections.....	23	5,610	11.3	25.6
(b) Recognition of representatives.....	29	5,061	14.3	32.2
Total cases closed before hearing.....	90	48,078	44.3	100.0
<b>Cases closed after hearing:</b>				
By withdrawal of petition.....	1	36	.5	8.3
By dismissal of petition.....	2	164	1.0	16.7
By settlement.....	2	135	1.0	16.7
By issuance of certification without election.....	1	140	.5	8.3
By certifications after election.....	5	2,334	2.4	41.7
By refusal of certification after election.....	1	700	.5	8.3
Total cases closed after hearing.....	12	3,509	5.9	100.0
<b>Cases pending:</b>				
Hearings to be held.....	70	9,870	34.5	69.3
Hearings prevented by injunction.....	7	2,622	3.4	6.9
Decisions pending <sup>1</sup> .....	13	7,489	6.4	12.9
Elections pending.....	3	995	1.5	3.0
Elections enjoined.....	6	7,683	3.0	5.9
Certifications pending.....	2	273	1.0	2.0
Total cases pending.....	101	28,932	49.8	100.0
Total representation cases.....	203	80,519	100.0	

<sup>1</sup> The issuance of 1 decision was prevented by injunction.

1. *Cases closed before hearing.*—Of the 203 representation cases received by the Board before June 30, 1936, 90, involving 48,078 em-

<sup>2</sup> See note 1, p. 33, *supra*.

ployees, were closed before hearings were held. Thus in 44.3 percent of the representation cases it was not necessary to take formal action. In about a third of the cases thus closed, or 14.3 percent of all representation cases, the petitioners withdrew their petitions. In this group there were 29 cases, involving 27,172 employees. In some cases the withdrawals resulted from adjustments of the controversies between the parties directly; in some cases they occurred after the petitioners learned that the Board had no jurisdiction over the particular controversy; in others they were withdrawn and charges were filed.

By far the largest number of cases in this category were closed as a result of settlements secured with the aid of the regional directors. In representation cases the chief purpose was to determine which person or organization the employees within a proper unit wanted as their representative in collective bargaining negotiations with their employer. A regional director, upon the filing of a petition, would always attempt to secure the consent of all parties involved to an election to determine this issue. In a consent election the terms and conditions of the election were usually the subject of agreement. In many instances the negotiations for a consent election led to an admission that the petitioner actually represented the majority of the employees and to the recognition of such representatives for the purpose of collective bargaining.

Fifty-two cases, 25.6 percent of all representation cases, were settled before hearing. These amounted to more than half of the cases in this category and involved 10,671 employees. Twenty-three of these cases were settled by the holding of consent elections, and in 29 cases elections were dispensed with and the employers recognized the representatives of the employees.

Five of the remaining 9 cases in this category, involving 6,100 employees, were closed by dismissal of the petitions, while the other 4, in which 4,135 employees were involved, were transferred to other agencies or from one regional office of the Board to another.

2. *Cases closed after hearing.*—Twelve cases, or 5.9 percent of the representation cases, involving 3,509 employees, came within this category. In each of these cases a hearing was held, pursuant to specific authorization by the Board, and in five cases, involving 2,334 employees, certifications of representatives were issued after elections were held. Two of the remaining seven cases were settled after hearing, in two cases the petitions were dismissed, in one case the petition was withdrawn by the petitioner, and in one case the Board refused to certify representatives after an election was held. The facts concerning representation were so clearly proven in the remaining case that the Board certified the petitioner as the representative of the employees without finding it necessary to conduct an election.

3. *Cases pending.*—One hundred and one, or 49.8 percent, of the representation cases in which petitions had been filed before June 30, 1936, were pending on that date. These cases involved 28,932 employees. Most of these cases were in the course of preparation. In 70 cases, involving 9,853 employees, the regional directors were either making preliminary investigations preparatory to submitting their recommendations to the Board, or were conducting negotiations in an attempt to arrange consent elections, or the cases were being pre-

pared for hearing. This accounts for 69.3 percent of the pending cases and 34.5 percent of all representation cases.

In seven<sup>1</sup> cases, involving 2,622 employees, the Board was unable to hold hearings because of injunction suits. There were decisions pending in 12 cases on June 30, and in 1 case the Board was prevented by injunction suit from issuing its decision in a case already heard. These 13 cases involved 7,489 employees.

In addition to the 6 cases in which the Board had conducted elections and taken final action, the Board had ordered elections in 11 pending cases. Elections were about to be conducted in 3 of these cases; elections had been held and certifications were being prepared in 2 of the cases, and the remaining 6 elections were delayed because of the commencement of injunction suits. This group of 11 cases involved 8,951 employees. Thus in 13.8 percent of the pending cases the Board was unable to proceed further because of the existence of injunction actions.<sup>2</sup>

Table VII sets forth the disposition of the representation cases by regions.

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<sup>1</sup> In 1 case the suit was against certain union witnesses to prevent them from testifying.

<sup>2</sup> A detailed discussion of the injunction actions is contained in chapter IX, *infra*.

TABLE VII.—Representation cases by regions

Origin of cases	Number of cases	Number of workers	Withdrawn by petitioner	Transferred	Petitions dismissed	Settled before hearing by—				Hearings held	Disposition after hearing						Action after election			Decisions pending	Decisions enjoined	Hearings to be held	Hearings enjoined				
						Consent election		Recognition			Settled	Dismissed	Withdrawn	Certification with- out election	Elections ordered—			Certification	Refusal to certify					Pending			
						Number	Workers	Number	Workers						Enjoined	Pending	Held										
Board—	1	4,800								1											1						
Region:																											
1	6	1,912				1	950	1	75	1											1					1	1
2	5	1,032	1			1	230			3											1						
3	2	(e)	1																								
4	9	11,924	3			1	128	1	60	2											1					2	1
5	1	(e)																									
6	6	4,319				2	775			3																	
7	8	8,635			1				300	2											1					1	1
8	7	6,116	1					1	25	1																1	1
9	4	4,144	2			1	64			3																1	3
10	19	7,494	4			3	1,203	1	600	8																2	1
11	2	1,321			1					1																1	1
12	9	1,035				2	285	4	284	1																2	1
13	13	5,412	2			3	446	2	312	4																3	1
14																										2	2
15	26	17,401	6	3		11	2,060	4		4																3	1
16	8	534	1	1	1	2	191	1	167	2																1	1
17	2	235	1			1	235																			1	1
18	3	1,183	1		1			1	48																	1	1
19	5	461				2	115	2	346																	1	2
20	61	6,165	2			1	528	2	800																	54	2
21	9	1,806	3		1	3	450	1	9																	1	1
Total	203	80,519	29	4	5	23	5,610	29	5,086	36	2	2	1	1	6	3	8	5	1	2	12	1				70	7

\* See footnote 1, p. 33 supra.

\* During hearing.

\* Board not a party to injunction suit.

## B. ELECTIONS

During the period ending June 30, 1936, 31 elections were conducted by the agents of the Board, 8 pursuant to Board order and 23 by consent of the parties involved in the controversy concerning representation. There were approximately 9,512 employees eligible to vote in these elections, and 7,734 actually participated in the polling. The fact that more than 80 percent of the eligible voters cast ballots in the elections conducted by the Board is an indication of the keen interest shown by employees in the choice of the persons or organizations who are to represent them in collective bargaining with their employers, and their approval of the democratic device of secret ballot to ascertain their choice.

The great majority of requests for investigation and certification of representatives were made by trade unions or their members, rather than by employee representation committees or other forms of "company unions." Of the total number of votes cast, 59.1 percent were in favor of the trade unions and 38.8 percent were cast against these unions. The balance were void ballots. In some cases the ballots offered a choice between two organizations, and a vote in favor of the organization which did not petition for the election is tabulated here as a vote against the trade union. In other cases the choice offered by the ballot was a choice of voting for or against the petitioning group as a representative for the purposes of collective bargaining.

The petitioning group was chosen as collective bargaining representative in 18 of the elections conducted by the Board's agents, and was not chosen in 13 of these elections. The percentage of elections won, 58 percent, is very close to the percentage of total votes cast in favor of the petitioning groups.

Methods of conducting the elections were usually shaped to meet the needs of individual cases. In consent elections an attempt was made to secure an agreement regarding all the details of the election. In this manner the parties determined the proper bargaining unit, the form of the ballot, the polling place, the time of the election, the eligibility list, the method of tallying, and other similar details. In those cases where elections were ordered by the Board it decided what the bargaining unit should be and usually directed that employees on the pay roll on a certain date should be eligible to vote. The regional director in whose region the case originated was empowered by the Board's direction of election to conduct the election and arranged the necessary details.

Some of the elections which had not been completed on June 30 raised new problems because of the nature of the industry. The Board ordered elections in several cases involving the maritime industry, and arrangements had to be made whereby notices of election and eligibility lists were posted on board the ships before they left on their outward voyages, and the men were polled on their return to their home ports. In such cases elections might not be completed for several months after they were commenced. In some cases the ships stopped at two ports before making a long voyage, and it was possible to post election notices when the ships left their home port and poll the men at their first port of call.

In almost all cases election notices were posted and distributed several days before the date of the election. These notices contained full details about the election, setting forth the time and place of polling, the purpose of the election and a copy of the ballot to be used. This enabled the employees to become familiar with the procedure to be followed and avoided much confusion and delay at the polling places. Usually each party had watchers and tellers present at the polling places, and these representatives signed certificates before the ballots were counted stating that the elections were conducted properly and fairly. This had the effect of eliminating many objections which, although without merit, might otherwise have been made by the losing party regarding the conduct of the elections, and were particularly useful in the case of consent elections.

Table VIII shows the regional offices in which the cases in which elections were held originated.

TABLE VIII.—Results of elections held by the National Labor Relations Board

Region of origin of cases in which elections were held	Number of elections	Number of employees eligible to vote	Total	Valid votes cast				Units won by trade-unions	Units lost by trade-unions
				For trade-unions		For company union or against trade-union			
				Number	Percent of total votes cast	Number	Percent of total votes cast		
Total.....	31	9,512	7,734	4,569	59.1	3,003	38.8	18	13
1.....	2	1,143	1,097	485	44.2	573	52.2		2
2.....	2	412	339	91	26.8	242	71.4	1	1
4.....	1	127	86	36	41.9	49	57.0		1
6.....	3	1,180	1,159	414	35.7	680	58.7	1	2
7.....	1	700	125	121	96.8	1	.8		1
8.....	1	315	214	196	91.6	18	8.4	1	
9.....	1	48	45	37	82.2	8	17.8	1	
10.....	4	1,889	1,129	1,009	89.4	114	10.1	4	
11.....	1	960	933	516	55.3	401	43.0	1	
12.....	3	678	671	466	69.4	192	28.6	3	
13.....	3	410	410	198	48.3	206	50.2	1	2
16.....	2	276	267	155	58.1	112	41.9	1	1
17.....	1	297	291	117	40.2	172	59.1		1
19.....	2	139	139	90	64.7	48	34.5	2	
20.....	1	508	508	408	80.3	98	19.3	1	
21.....	3	430	321	230	71.6	89	27.7	1	2

<sup>a</sup> Insufficient number participated.

<sup>b</sup> Estimated.

31/1850

## IX. LITIGATION<sup>1</sup>

The National Labor Relations Board has been engaged in two principal types of litigation during its first year. The normal and expected proceedings were those instituted in circuit courts of appeals to enforce or review orders of the Board made after administrative hearing and determination. The second type consisted of some 80 injunction proceedings brought by employers to prevent the Board from taking any action.

While the latter exerted a heavy claim on the energies of the litigation staff, which might better have been expended in conducting Board cases in constituted courts of review, there is satisfaction in the belief that the injunction proceedings played a helpful part in causing the courts to become more familiar with the act and with Board procedure.

For nearly a year the members of the litigation staff engaged eminent counsel for industry before the Federal district courts of every important industrial center in the country, hoping by the vigor of their counter attacks to discourage still more employers from bringing on what might very well have been a flood of suits too overpowering for a small staff to meet. Relief from this onerous responsibility came gradually, as it began to appear that the majority of both Federal district courts and circuit courts of appeals would sustain the Board's position that, under the act, the proper remedy for alleged irreparable damage by reason of Board activities does not lie in injunction proceedings but rather through review in an appropriate circuit court of appeals.

While not a final determination of the question, a persuasive action was taken by the Supreme Court of the United States on October 12, 1936, when that Court refused to review a case in which the Circuit Court of Appeals for the Fifth Circuit had denied to the Bradley Lumber Company an injunction against the Board.

Since the Board itself was forced to seek dismissals of injunction suits before it could proceed with its duty of conducting cases under the act, it may be appropriate to dispose of that subject before considering the question of actions to enforce or review Board orders.

### A. INJUNCTION PROCEEDINGS

During its first month, and before the Board had opportunity even to announce its procedure, an incident occurred which was to stimulate injunction suits against the Board, and even to provide a sample brief for those wishing to attack the act. This was the publication by the National Lawyers Committee of the American Liberty

<sup>1</sup> Contrary to usual practice this section describes the course of the Board's cases in the courts beyond June 30. It is believed that to have limited the report in this regard to that date, while the National Labor Relations Act was still in its early stages of operation, would have given a misleading picture of the actual situation.



League, on September 5, 1935, of a printed assault on the constitutionality of the act. This document, widely publicized and distributed throughout the country immediately upon its issuance, did not present the arguments in an impartial manner for the use of attorneys. It was not a review of the cases which might be urged for and against the statute. It was not a brief in any case in court nor was it an opinion for any client involved in any case pending. Under the circumstances it can be regarded only as a deliberate and concerted effort by a large group of well-known lawyers to undermine public confidence in the statute, to discourage compliance with it, to assist attorneys generally in attacks on the statute, and perhaps to influence the courts.

The injunctive proceedings began in November 1935 with the filing of a bill of complaint in equity in the western district of Missouri. It may be worth analysis as being typical of others that followed. The bill alleged that the National Labor Relations Act was unconstitutional and void, that the operations of the company in question were beyond the regulatory power of the Federal Government, and that the holding of hearings would occasion irreparable damage in that it would involve expense, impair existing employer-employee relationships, affect adversely the good will of the company, subject the company to the possible necessity of producing records under subpoena, and might involve criminal prosecution. The bill then prayed for the issuance of a temporary restraining order (which was granted without notice to the Board, or hearing) and the later issuance of temporary and permanent injunctions, the effect of which would be to prevent the Board from holding any hearing as provided for under the act.

Such a proceeding in equity in a Federal district court was at entire variance with the carefully devised statutory procedure set up in the act for the purpose of affording judicial review of the orders of the Board. That statutory procedure in essence is the procedure long used by the Federal Trade Commission and often approved by the courts. It contemplates the issuance of complaints by the Board in instances where it appears, upon a preliminary investigation, that an unfair labor practice as defined in the act is occurring and is affecting interstate commerce. It contemplates that after full hearing the Board should determine whether the case was one falling within the jurisdiction of the Board and if so, whether or not the unfair labor practices alleged were in fact being committed.

The statutory procedure provides that any order made by the Board looking toward the prevention of such unfair labor practices be made subject to the exclusive power of the appropriate circuit courts of appeals of the United States (save in vacation time, when resort may be had to a district court) to review the proceedings before the Board and to affirm, reverse, or modify the Board's order, as the case may require.

Immediately following the institution of this first suit, a Nation-wide and apparently concerted endeavor was made to utilize the same injunctive method to prevent the Board from proceeding with many other hearings scheduled before it. Not only did the attorneys filing the injunction suits become most ingenious in devising all possible allegations of injury, but, strikingly enough, the growth

and fantastic character of these allegations showed a gradually increasing uniformity. In the first bills of complaint the allegations of damage were not very detailed, then some other counsel would think of other possible injuries and add them to those previously alleged in suits already filed. Subsequent suits would incorporate all damages alleged in previous suits, plus whatever additional ones the particular attorney could think of; and this total would be contained in the next suit, with further additions.

The process was like a rolling snowball. The allegations in a pleading filed by an employer in Georgia, for example, would show up in precisely the same wording in a pleading filed in Seattle. There came a very rapid and widespread exchange of pleadings all over the country until all had exhausted their ingenuity in conjuring up the many and gross injuries which it was alleged a hearing before the Board would entail.

For the most part the courts were willing to listen to full arguments, and in practically all of the suits elaborate briefs were filed with the district courts.

The seriousness of the situation lay in the fact that if the district courts of the United States could be persuaded to strike down the statutory procedure provided in the act, the Board would be ousted from its function of initially determining, as an expert body, in what instances the act should be applied and would be prevented from testing the constitutionality of the act and its application to particular factual situations upon complete factual records as provided in the act. It was, therefore, absolutely essential that this attempted use of the injunctive power of the district courts be vigorously opposed.

The filing of each bill in equity seeking this injunctive relief created a necessity for the utmost speed in meeting each attack. Ordinarily, upon the filing of a bill in equity seeking to enjoin the Board from holding a hearing, the courts issued temporary restraining orders and set down for hearing within a few days thereafter the application of the complainant for a temporary injunction. In opposing such applications for temporary injunctions, the Board took the well-established legal position that the remedy provided for in the act, of review by circuit courts of appeals of any final order made by the Board, was entirely adequate, and that such incidental expense or annoyance as might flow from the holding of a hearing before the Board was not the type of damage which, under settled equity principles, would cause a court of equity to intervene and stay the administration of a statute. It was also the Board's position that since the plaintiffs in these suits could not surmount these barriers it was unnecessary for the district courts to consider the constitutionality of the act.

In each separate case presented it was, therefore, necessary to file a full return, the general purpose of which was to deny and explain the allegations in the bill of complaint and to make it apparent that the Board was proceeding upon a *prima facie* showing that the case before it was one within its jurisdiction. In addition to such a return, opposing affidavits were required, negating such assertions as that the respondent was threatened with possible criminal action, or that respondent was about to be subjected to a general search

and seizure of its papers and records through the issuance of subpoenas. In addition to these pleadings and affidavits in opposition to the application for a temporary injunction, motions to dismiss the bill of complaint were interposed. Finally, it was, in almost every case, necessary to draft special appearances, together with motions to quash process, in behalf of Board members named in suits but not properly subject to the jurisdiction of the courts outside of the District of Columbia. All of these pleadings had to be specifically adapted to each particular case. Each required the attention of skilled litigation counsel, as well as a great amount of stenographic work, all done under very great pressure of time.

Upon the return day of applications for temporary injunctions in such suits it was necessary to send counsel to argue the cases throughout the country. These injunction proceedings were constantly being brought before district judges, who had had no prior contact with or knowledge of the National Labor Relations Act. Some judges had the impression that this act was one providing for compulsory arbitration. Others thought that it was merely a statute of conciliation. Elaborate arguments were also required, covering the mechanics of the act as well as the applicable rules of equity jurisdiction.

The result of this litigation in injunction cases has been as follows:

District courts:<sup>1</sup>

Suits commenced.....	83
Applications for temporary injunctions defeated.....	59
(a) By denial.....	46
(b) By granting motions to quash.....	5
(c) By withdrawal of suit.....	8
Applications for temporary injunctions granted.....	20
Pending.....	4

Circuit courts of appeals:<sup>2</sup>

Appeals perfected.....	42
Denial of temporary injunctions affirmed.....	14
Denial of temporary injunctions reversed.....	0
Granting of temporary injunctions affirmed.....	1
Granting of temporary injunctions reversed.....	0
Withdrawn.....	3
Pending.....	24
Stays pending appeal denied.....	2
Stays pending appeal granted.....	10

Supreme Court of the United States:<sup>3</sup>

Petitions for certiorari to review denial of injunction.....	1
Petitions denied.....	1

<sup>1</sup> See pp. 56-7-8 *infra* for list of cases.

<sup>2</sup> See pp. 58-9 *infra* for list of cases.

<sup>3</sup> *Bradley Lumber Co. v. National Labor Relations Board* (certiorari denied Oct. 12, 1936).

It will be noted that the overwhelming weight of authority sustains the Board in its contention that courts of equity have no jurisdiction to interfere with the statutory procedure provided under the act. In those cases in which district courts have granted injunctions against Board proceedings, the Board has, almost without exception, perfected appeals to the appropriate circuit courts of appeals. Only one of these cases has been decided in a circuit court. That decision was in *Stout v. Pratt*, where the Eighth Circuit Court of Appeals held it unnecessary to pass upon any constitutional issues but took the posi-

tion that it would not disturb the exercise of discretion by the district court in granting temporary injunctive relief pending final hearing. The other cases are awaiting argument or decision—1 in the first circuit, 1 in the sixth, 3 in the eighth, and 10 in the seventh. In all cases in which appeals have been decided by circuit courts where the district court had denied an injunction, the circuit courts have held the denial was proper, and in most cases have affirmed the dismissal of the bill of complaint, indicating that the question was one of law and not of discretion.

### B. ENFORCEMENT LITIGATION

There are two principal questions of constitutional law involved in the act, namely, (1) its general validity and application to particular factual situations under the commerce clause, upon which it is based; and (2) the validity of particular provisions under the due process clause of the fifth amendment.

The questions arising under the fifth amendment are the same in all cases, since the general problem in that regard is whether the particular regulations involved in each case deprive the employer of the liberty guaranteed by the due process clause of the fifth amendment to the Constitution. Hence, decision of such questions will not vary with differences in the facts of the various cases. But decision upon the question of the scope of the application of the act under the commerce clause may vary with the facts disclosed at the hearing concerning the nature of the employer's operations and the occupations of the particular employees involved. Hence, the Board conceived it to be in the interest of all parties concerned, employers, employees, and the public generally, to obtain from the courts, as promptly as possible, decisions in a variety of cases involving the extent of application of the act.

Notwithstanding the injunction suits, the Board was able to hear and decide, during the first year of its operation, a considerable number of cases conducted under the procedure of the act.

As a practical matter, it would have been impossible for the Board, in view of its limited budget and personnel, to seek enforcement of all its orders in these cases. Furthermore, such a course would have been unnecessary and inadvisable, since the decision of a typical case in any circuit court of appeals would settle the issues in that circuit pending the ultimate judgment of the Supreme Court.

The first decision and order of the Board to be presented to a circuit court of appeals was in a case against the Pennsylvania Greyhound Lines, Inc., involving that company's relations with certain employees at its Pittsburgh garage. The complaint alleged the discharge of several employees for union activity, certain acts of intimidation, and domination of a company union, involving unfair labor practices 8 (1), (2), and (3). The hearing of the Board was held October 22 to 26, 1935. The Board's decision was rendered December 7, 1935. The record in the case and the Board's petition for enforcement were filed with the Circuit Court of Appeals for the Third Circuit on December 10, 1935. The court denied a motion for preference<sup>1</sup> and did not hear the case until April 1, 1936, when it was

<sup>1</sup> Sec. 10 (1) of the act provides: "Petitions filed under this act shall be heard expeditiously, and if possible within 10 days after they have been docketed."

argued after the filing of briefs by both sides. The court has not yet decided the case. On September 9, 1936, it notified the Board that it desired reargument of the case. Reargument was had on October 6, 1936.

The effort of the Board in this particular case to obtain an early determination of the application of the act to interstate transportation, and the validity of the first three unfair labor practices under the fifth amendment, did not bear fruit. Recognizing the possibility of such delay, the Board, on February 27, 1936, petitioned the Circuit Court of Appeals for the Ninth Circuit to enforce an order previously issued in a case against the Mackay Radio & Telegraph Co. This case had been heard before the Board's trial examiner at San Francisco from December 2 to 20, 1935, and involved only the charge that certain employees had been discharged for union activity. The Board's decision sustaining the charges was rendered February 20, 1936. The court set the case for argument on April 16, 1936, and it was then argued and briefs were filed, but decision has not yet been rendered.

The Board followed by filing with the Circuit Court of Appeals for the Fourth Circuit still another interstate transportation case, this one against the Washington, Virginia & Maryland Coach Co. Discriminatory discharge was again the basic issue. The Board hearing was held on March 23 to 26, 1936, and its decision was rendered May 21, 1936. On June 5, 1936, the order of the Board, together with the record, was filed with the court for enforcement. The case was argued on July 2, 1936. On October 6, 1936, the court upheld the act and the Board's order in this case. On October 17, 1936, the company filed its petition with the Supreme Court, asking that a writ of certiorari issue to review this decision, and this petition was granted on October 26, 1936.

The case against the Associated Press is another case of interstate communication. The complaint in this case, centering upon charges that Morris Watson, an editorial employee, had been discharged for union activity, was originally set for hearing on January 8, 1936. An injunction suit was filed to prevent the hearing. The injunction was denied and suit dismissed on March 31, 1936. The Board case was then promptly heard on April 7 and 8, 1936, with Dean Clark, of the Yale Law School, acting as trial examiner for the Board. Dean Clark made detailed findings of fact in his intermediate report as to the nature of the respondent's business, the character of work performed by the editorial employees, and the circumstances leading up to the discharge of Watson. He found that any cessation of the work of the employees in the New York office would cause a break in the flow of foreign news and of important domestic news, which would seriously impede the issuance of newspapers in all parts of the country, and that the policy of the act seems clearly applicable to the situation disclosed by the record. The Board's decision and order was made May 21, 1936.

The Associated Press having stated that it would not comply, the Board, on May 26, 1936, petitioned the Circuit Court of Appeals for the Second Circuit for enforcement. The case was argued before the court on June 16, 1936. On July 13, 1936, the court upheld the order of the Board and the constitutionality of the act as applied

in this case. On September 14, 1936, the Associated Press filed its petition with the Supreme Court of the United States asking that a writ of certiorari issue to review this decision. The Board joined in the prayer for review. On October 26, 1936, the Supreme Court granted certiorari. *The Associated Press* case and the *Washington, Virginia and Couch Co.* case should determine the validity of the act in its general scope and its application to employers in their relations with employees engaged in interstate transportation, communication, or the like, as well as important questions arising under the fifth amendment.

The Board has also filed three additional cases with circuit courts, which may be classed as interstate transportation or kindred thereto, as follows:

*Delaware-New Jersey Ferry Co.*—This company operates ferry-boats at two points on the Delaware River for the transportation of persons and property between the States of Delaware and New Jersey. The hearing, on a complaint of failure to bargain collectively, was held on October 31, 1935, and the Board's decision was rendered on January 2, 1935. Upon subsequent noncompliance, petition for enforcement was filed in the Circuit Court of Appeals for the Third Circuit on April 27, 1936. The case has not yet been set for argument.

*Agwilines, Inc.*—This involves certain employees of an interstate steamship line. The unfair labor practices complained of were discharge for union activity and failure to bargain collectively, involving sections 8 (1), (3), and (5). The hearing was held at Tampa, Fla., May 7, 8, 9, and 11, 1936. The Board's decision was rendered July 3, 1936, and on July 16, 1936, the Board petitioned the Circuit Court of Appeals for the Fifth Circuit for enforcement. The case was argued on October 15, 1936.

*The National New York Packing & Shipping Co.*—This company is engaged in what may be called an interstate brokerage business. It consolidates numerous individual shipments destined for interstate commerce into one such shipment. The unfair labor practices alleged are 8 (1) and 8 (3). The hearing was held in New York City on March 17 and 18, 1936. The Board's decision was rendered June 29, 1936, and its petition for enforcement of its order was filed in the Circuit Court of Appeals for the Second Circuit on July 29, 1936. Argument was had on October 19, 1936, and on November 2, 1936, the court upheld the order of the Board and the constitutionality of the act as applied in this case.

A considerable number of the hearings and decisions of the Board were cases involving or including manufacturing or production employers and employees, where the employer was engaged extensively in buying and selling in interstate commerce as a regular course of business. In such cases it was the Board's position that industrial disturbances among such production or manufacturing employees in interstate enterprises have the intent or the necessary effect of burdening or obstructing commerce within the meaning of the term "affecting commerce" contained in section 2 (7) of the act. In order to obtain judicial determination of the application of the act under the commerce clause of this class of cases, the Board, in addition to defending its right to hold hearings in such cases in innumerable in-

stances in which injunction suits were filed, has carried on enforcement litigation to uphold its orders in such cases.

The case against the *Fruehauf Trailer Co.* was the first case of this type to be taken into court by the Board. The case was heard by the Board itself at Detroit on November 6, 7, and 8, 1935, on a complaint alleging the discriminatory discharge of certain employees engaged in production operations. Decision was rendered on December 14, 1935, and almost simultaneously, on December 17, 1935, the company and the Board petitioned the Circuit Court of Appeals for the Sixth Circuit for enforcement and review of the order and decision of the Board. The court heard the case on June 2, 1936, and on June 30, in a per curiam decision, held the order of the Board in this case could not be enforced stating the power of Congress under the commerce clause did not extend to any regulation of the relations between an employer and employees engaged in production.

On April 11, 1936, the Board filed its petition with the Circuit Court of Appeals for the Fifth Circuit to enforce its order against the *Jones & Laughlin Steel Corporation*. The unfair labor practices involved are the same as those of the *Fruehauf* case, i. e., discriminatory discharge of employees engaged in manufacturing operations. The case was argued June 1, 1936, and on June 15, in a per curiam decision, the court rendered a decision similar to that in the *Fruehauf* case.

A like result followed in a similar case against the *Friedman-Harry Marks Clothing Co.* in which the Board petitioned the Circuit Court of Appeals for the Second Circuit for enforcement of its order. This case was argued and decided simultaneously with *The Associated Press* case previously referred to. The same is true of *Foster Bros. Mfg. Co. v. National Labor Relations Board*, decided on October 6, 1936, by the Circuit Court of Appeals for the Fourth Circuit, decided simultaneously with the *Washington, Virginia, and Maryland Coach Company* case, also referred to above.

Petitions for writs of certiorari in the *Jones & Laughlin*, *Fruehauf*, and *Friedman-Harry Marks* cases have been filed in the Supreme Court. On November 9, 1936, the Court granted the petitions.

In none of the foregoing four cases did the circuit courts of appeals pass on the constitutionality of the act itself. Instead, they held that the particular order of the Board under the facts of the case exceeded the power of Congress under the commerce clause and therefore was beyond the power of the Board under the statute. The decision of the Supreme Court of the United States in *Carter Coal Company v. Carter*, decided May 18, 1936, under the Bituminous Coal Conservation Act of 1935, was relied upon in each instance. In two cases arising under the statutory procedure the constitutionality of the act has been directly passed upon. These cases are those of the *Associated Press* and the *Washington, Virginia & Maryland Coach Co.*, previously discussed herein, in which the Circuit Courts of Appeals of the Second and Fourth Circuits, respectively, have held that the act is within the commerce power of the Federal Government and is not violative of any other constitutional provisions. The orders of the Board in these cases were upheld. The fifth circuit also upheld the constitutionality of the act in the *Bradley Lumber Co.* injunction

suit, hereinabove referred to, without passing upon any particular application of the act.

Pending in the circuit courts of appeals are the following additional cases involving manufacturing or producing employees of interstate enterprises filed under the regular statutory procedure for the enforcement or review of orders of the Board:

*National Labor Relations Board v. Alaska Juneau Gold Mining Co.* (fourth circuit, filed Oct. 1, 1936).

*National Labor Relations Board v. Carlisle Lumber Co.* (ninth circuit, filed Sept. 28, 1936).

*Clinton Cotton Mills v. National Labor Relations Board* (fourth circuit, filed May 25, 1936).

*Jeffery-DeWitt Insulator Co. v. National Labor Relations Board* (fourth circuit, filed May 19, 1936).

*Renown Stove Co. v. National Labor Relations Board* (sixth circuit, filed July 27, 1936).

*Wheeling Steel Corporation v. National Labor Relations Board* (sixth circuit, filed June 12, 1936).

As matters now stand, the Supreme Court has the opportunity to pass upon the constitutionality of the statute in its application to broad fields of our industrial life at the December 1936 term. *The Associated Press case* and the *Washington, Virginia and Maryland Coach Company case* squarely raise the basic legal issues in respect to unfair labor practices 8 (1) and (3), as applied to a business in the nature of interstate communication and interstate transportation. And the validity of the law as applied in those particulars to manufacturing enterprises engaged extensively in interstate commerce is directly raised in the *Jones & Laughlin*, *Fruehauf*, and *Friedman-Harry Marks* cases.

None of the cases in which certiorari has been granted involves the constitutionality of the provisions of the act enforcing collective bargaining by majority rule, namely, section 8 (5) as read in connection with section 9 (a). But the collective bargaining and majority rule questions are ready for the determination of the Supreme Court in a case arising under the analogous provisions of the Railway Labor Act, *The Virginian Railway Company v. System Federation No. 40*, decided by the Circuit Court of Appeals for the Fourth Circuit on June 18, 1936. In that case the circuit court sustained majority rule and the provisions of the Railway Labor Act concerning collective bargaining.

*Miscellaneous litigation.*—The exercise of the Board's subpoena power has resulted in two cases. The subpoenas of the Board are not self-enforcing and the Board itself has no power of enforcement other than that granted in section 11 (2) of the act, which provides as follows:

In case of contumacy or refusal to obey a subpoena issued to any person, any district court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to

\* \* \* (enforce a subpoena). Parenthetic matter added.

Generally speaking, the subpoenas of the Board have been uniformly obeyed when used in connection with the conduct of hearings on com-



plaints or investigations concerning representation under the act, which is the only use which has been made of the subpoena power, but in the case of the *New England Transportation Company* the Board ordered an election as a part of its investigation concerning representation among certain of the employees of that company, and subpoenaed the pay-roll list to aid in conducting the election. The subpoena was disobeyed. The Board filed an application with the District Court of the United States for the District of Connecticut for the aid of that court under section 11 (2) in enforcing the subpoena. After hearing and full argument the court held the statute constitutional and directed compliance with the subpoena (14 F. Supp. 497).

The only other proceeding of this kind filed by the Board was a similar proceeding against the *Dwight Manufacturing Co.*, in the District Court of the United States for the Northern District of Alabama. Without passing on the question of constitutional power to enforce the subpoena under the circumstances of this case, the court found that the person to whom the subpoena was directed was not in possession of the evidence called for and accordingly refused to enforce the subpoena.

There have been two other court proceedings of a rather unique character. In the case of the *Pittsburgh Steel Co.* the Board, under the statutory procedure, directed an election to be held. The statute provides for no appeal from a mere direction of election to be conducted as a part of the investigation concerning representation under section 9, but should this investigation or the results of the election become material in any subsequent proceeding against the company under section 10, there is, of course, the right on the part of any aggrieved party to obtain a review in the appropriate circuit court of appeals. Nevertheless, the Pittsburgh Steel Co. applied to the Circuit Court of Appeals for the Third Circuit for a review of the direction of election itself. In the case of the *Protective Motor Service Co.*, an application was made to the Circuit Court of Appeals for the Third Circuit for an order directing the Board to take additional evidence, prior to any final determination of the case then pending before the Board. Despite the absence of any statutory jurisdiction to act under such circumstances, the court entered ex parte orders and stays of proceedings before the Board. In these cases, the Board, appearing specially, moved to dismiss on the ground of lack of jurisdiction of the court at that stage of the proceedings. The motions were argued and submitted May 26, 1936, and have been kept under advisement by the court ever since.

#### COMMENTS

The legal staff of the Board, under permission so to do expressly granted in the statute (sec. 4 (a)), has conducted the above litigation, except that the Solicitor General in collaboration with the Board briefed the *Fruehauf* case in the circuit court of appeals and personally participated in the argument, and except that in several of the injunction suits the United States attorneys have assisted the Board upon request of the Board made to the Attorney General. Whenever requested, the Department of Justice has promptly given its aid. The Board has kept the Solicitor General, who has generously cooperated

with the Board, informed of the course of litigation under the statute.

The statute contemplates (see sec. 10 (i)) speedy judicial review and determination of questions arising under the statute, particularly the enforcement of Board orders. This has been obtained particularly in the Circuit Courts of Appeals for the Second, Fourth, and Fifth Circuits. The sixth circuit acted with promptness after the hearing in the *Fruehauf* case. It will be seen, however, that there has been considerable delay in the third and ninth circuits, so much so, that were the delay occasioned in the cases now pending a criterion of what might be expected in the future, the act, because of its nature, would be considerably crippled. It should be said, on the other hand, that it is hardly fair to take the speed of judicial determinations under the statute during the past year as a permanent guide. Once the statute were sustained and its application fairly well defined by judicial decision, it would not be unreasonable to expect that the procedure outlined in the statute would operate with sufficient rapidity to make the statute effective. Further, there would doubtless be considerable compliance without the necessity of court proceedings except under special circumstances.

Decisions under the act have now been rendered by five circuit courts of appeals of the United States. No one of these courts has held the statute in any respect unconstitutional. Three of these circuit courts of appeals (second circuit in *The Associated Press* case; fourth circuit in the *Washington, Virginia and Maryland Coach Co.* case; and fifth circuit in the *Bradley Lumber Co.* case) have held the statute valid under the Constitution both as a regulation of commerce and against objections that it violated provisions of the due process clause of the fifth amendment. These same circuit courts of appeals, together with the sixth circuit, have held that the statute does not apply to an employer engaged in interstate commerce in his relations with his production employees (second circuit in *Friedman-Harry Marks Clothing Co.* case, fourth circuit in *Foster Manufacturing Co.* case, fifth circuit in *Jones & Laughlin* case, and sixth circuit in *Fruehauf Trailer Co.* case).

#### APPLICATIONS FOR TEMPORARY INJUNCTIONS

##### (a) District Court decisions denying temporary injunctions:

- A. C. Lawrence Leather Co. v. Madden* (Sup. Ct. D. C., Adkins, J.);
- Alexander Smith & Sons Carpet Co. v. Herrick* (S. D. N. Y., Hulbert, J.);
- Beaver Mills v. Madden* (Sup. Ct. D. C., Adkins, J.);
- Bethlehem Shipbuilding Co. v. Madden* (Sup. Ct. D. C., Adkins, J.);
- Bethlehem Shipbuilding Corp. v. Nylander* (S. D. Cal., Stephens, J.), 14 F. Supp. 201;
- Bemis Bros. Bag Co. v. Feidelson* (W. D. Tenn., Martin, J.), 13 F. Supp. 153;
- Bradley Lumber Co. v. National Labor Relations Board* (E. D. La., Borah, J.);
- Brown Shoe Co. v. Madden* (Sup. Ct. D. C., Adkins, J.);
- Buchsbaum & Co. v. Beman* (N. D. Ill., Wilkerson, J.), 14 F. Supp. 444;
- Cabot Mfg. Co. v. Madden* (Sup. Ct. D. C., Adkins, J.);
- Cannon Mills, Inc., v. Feidelson* (M. D. N. C., Hayes, J.);
- Carlisle Lumber Co. v. Hope* (W. D. Wash., Cushman, J.);
- Chrysler Corp. v. Bowen* (E. D. Mich., Moinet, J.);
- E. I. Du Pont de Nemours & Company and Du Pont Rayon Co. v. Boland* (2 cases, W. D. N. Y., Rippey, J.);
- Eastern Mfg. Co. v. Feidelson* (E. D. N. C., Meekins, J.);
- Echols v. Madden* (Sup. Ct. D. C., Adkins, J.);

- Gate City Cotton Mills v. Madden* (Sup. Ct. D. C., Adkins, J.);  
*General Motors Corp. v. Bajork* (E. D. Mo., Moore, J.);  
*General Motors Truck Corp. v. Bowen* (E. D. Mich., Moinet, J.);  
*General Motors Truck Corp. and Yellow Truck, etc., Co. v. Bowen* (E. D. Mich., Moinet, J.);  
*Golden Belt Mfg. Co. v. Feidelson* (M. D. N. C., Hayes, J.);  
*Goodyear Tire & Rubber Co. v. Madden* (Sup. Ct. D. C., Bailey, J.);  
*Hatfield Wire & Cable Co. v. Madden* (Sup. Ct. D. C., Cox, J.);  
*Heller Bros. v. Madden* (Sup. Ct. D. C., Adkins, J.);  
*International Nickel Co. v. Madden* (Sup. Ct. D. C., Adkins, J.);  
*J. C. Pilgrim et al. v. Madden* (Sup. Ct. D. C., Adkins, J.);  
*Jamestown Veneer & Plywood Corp. v. Boland* (W. D. N. Y., Knight, J.), 15 F. Supp. 28;  
*John Blood & Co. v. Madden* (E. D. Pa., Kirkpatrick, J.);  
*Labor Board of General Motors Truck Company v. Bowen* (E. D. Mich., Moinet, J.);  
*Mackay Radio & Tel. Co. v. Hope* (W. D. Wash., Bowen, J.);  
*Moore Dry Dock Co. v. Rosseter* (N. D. Cal., Louderback, J.);  
*National Seal Co. v. Herrick* (S. D. N. Y., Patterson, J.);  
*Ohio Custom Garment Co. v. Lind* (S. Dist. Ohio, W. Div., Nevin, J.), 13 F. Supp. 533;  
*Precision Castings Co. v. Boland* (W. D. N. Y., Rippey, J.), 13 F. Supp. 877;  
*Remington Rand, Inc., v. Lind* (W. D. N. Y., Knight, J.);  
*The Associated Press v. Herrick* (S. D. N. Y., Bondy, J.), 13 F. Supp. 897;  
*Whiterock Quarries, Inc., v. Penn. R. R. Co. and National Labor Relations Board* (Mid. D. Pa., Johnson, J.);  
*Wilson & Co. v. Gates* (D. Minn., 2d Div., Joyce, J.);  
*Corinth Hosiery Mill v. Logan* (N. D. Miss., Cox, J.);  
*Monthly Checkers Club v. Rosseter* (2 cases, N. D. Cal., Roche and Norcross, JJ.).  
*Dartmouth Woolen Mills, Inc. v. Myers* (D. N. H., Morris, J.);  
*Mack Molding Co. v. Madden* (Sup. Ct. D. C., Adkins, J.);  
*Labor Board of General Motors Truck Corp. v. Bowen* (E. D. Mich., Moinet, J.);  
*Santa Cruz Fruit Packing Co. v. Rosseter* (N. D. Cal., Louderback, J.);  
 (b) District Court decisions granting motions to quash:  
*Jamestown Plywood Corp. v. National Labor Relations Board* (D. C., W. D. N. Y., Knight, J.);  
*Lion Shoe Company v. National Labor Relations Board* (D. Mass., Sweeney, J.);  
*N. E. Transportation Co. v. National Labor Relations Board* (D. Mass., Sweeney, J.);  
*Mackay Radio & Telegraph Co. v. National Labor Relations Board* (D. Oreg., McNary, J.);  
*A. C. Lawrence Leather Co. v. National Labor Relations Board* (D. Mass., Sweeney, J.).  
 (c) Suits withdrawn:  
*Freundlich Co. v. National Labor Relations Board* (D. C., Mass.);  
*Iowa Packing Co. v. Pratt* (2 cases, W. D. Mo., and D. C.);  
*Pure Oil Co. v. Lind* (N. D. Ohio, E. D.);  
*Robinson & Golluber v. Herrick* (S. D. N. Y.);  
*Peter Wendel & Sons, Inc. v. Herrick* (S. D. N. Y.);  
*Dwight Manufacturing Co. v. Madden* (Sup. Ct. D. C.);  
*Swift & Co. v. Madden* (Sup. Ct. D. C.).  
 (d) District Court decisions granting temporary injunctions:  
*Infant Socks, Inc. v. Clark* (E. D. Wis., Geiger, J.);  
*J. I. Case Company v. Clark* (E. D. Wis., Geiger, J.);  
*Lindemann & Hoverson Company v. Clark* (E. D. Wis., Geiger, J.);  
*Marathon Electric Mfg. Co. v. Clark* (E. D. Wis., Geiger, J.);  
*Wisconsin News v. Clark* (E. D. Wis., Geiger, J.);  
*Highway Trailer Co. v. Clark* (E. D. Wis., Geiger, J.);  
*Bethlehem Shipbuilding Corp. v. Myers* (D. Mass., Brewster, J.);  
*Employees of Bethlehem Shipbuilding Corp. v. Myers* (D. Mass., Brewster, J.);  
*Clayton Mark & Co. v. Beman* (N. D. Ill., Woodward, J.), 13 F. Supp. 627;  
*Cocherell v. Beman* (N. D. Ill., Woodward, J.), 13 F. Supp. 627;

*Independent Workers of Clayton Mark & Co. v. Beman* (N. D. Ill., Woodward, J.), 13 F. Supp. 627;  
*Stout v. Pratt* (W. D. Mo., Otis, J.), 12 F. Supp. 864;  
*Bendix Products Corp. v. Beman* (N. D. Ill., Barnes, J.), 14 F. Supp. 58;  
*Eagle-Picher Lead Co. v. National Labor Relations Board* (N. D. Okla., Kennamer, J.), 15 F. Supp. 407;  
*El Paso Electric Co. v. Elliott* (S. D. Texas, Boynton, J.);  
*Iowa Mfg. Co. v. Beman* (N. D. Iowa, Scott, J.);  
*James Vernor Company v. Bowen* (E. D. Mich., Moinet, J.);  
*Weil-Kalter Mfg. Co. v. Garvey* (E. D. Ill., Wham, J.).  
*Cochecho Woolen Mfg. Co. v. Myers* (D. N. H., Morris, J.);  
*Oberman & Co., Inc. v. Pratt* (W. D. Mo., Reeves, J.);

## CIRCUIT COURTS OF APPEALS CASES

## (a) Denial of temporary injunctions affirmed:

## SECOND CIRCUIT

*E. I. Du Pont de Nemours & Company and DuPont Rayon Company v. Boland*, 85 F. (2d) 12 (affirming decision of Judge Rippey of western district, New York, denying temporary injunction and dismissing bill of complaint).  
*E. I. Du Pont de Nemours & Company and DuPont Rayon Company v. Boland*, 85 F. (2d) 12 (second case, affirming decision of Judge Rippey of western district, New York, denying temporary injunction and dismissing bill of complaint).  
*Precision Castings Company v. Boland*, 85 F. (2d) 15 (affirming decision of Judge Rippey of western district, New York, denying temporary injunction and dismissing bill of complaint).  
*Alexander Smith & Sons Carpet Co. v. Herrick*, 85 F. (2d) 16 (affirming decision of Judge Hulbert of southern district, New York, denying temporary injunction and dismissing bill of complaint).

## FIFTH CIRCUIT

*Bradley Lumber Co. v. National Labor Relations Board*, 84 F. (2d) 197 (denying stay pending appeal and, on final hearing, affirming decision of Judge Borah of eastern district of Louisiana, denying temporary injunction and dismissing bill of complaint). Certiorari denied October 12, 1936.

## UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

*Heller Brothers Company v. Lind* (affirming decision of Judge Adkins, denying temporary injunction and dismissing bill of complaint).

*A. C. Lawrence Leather Co. v. Madden* (affirming decision of Judge Adkins, denying temporary injunction and dismissing bill of complaint).

*Brown Shoe Co., Inc., v. Madden* (affirming decision of Judge Adkins, denying temporary injunction and dismissing bill of complaint).

*Beaver Mills v. Madden* (affirming decision of Judge Adkins, denying temporary injunction and dismissing bill of complaint).

*J. C. Pilgrim et al. v. Madden* (affirming decision of Judge Adkins, denying temporary injunction and dismissing bill of complaint).

*Cabot Manufacturing Company v. Madden* (affirming decision of Judge Adkins, denying temporary injunction and dismissing bill of complaint).

*Bethlehem Shipbuilding Corporation, Ltd., v. Madden* (affirming decision of Judge Adkins, denying temporary injunction and dismissing bill of complaint).

*Hatfield Wire & Cable Company v. Herrick* (affirming decision of Judge Cox, denying temporary injunction and dismissing bill of complaint).

## (b) Granting of temporary injunctions affirmed:

## EIGHTH CIRCUIT

*Stout v. Pratt* (affirming decision of Judge Otis, western district, Missouri, granting temporary injunction).

## (c) Stays pending appeal denied:

## SIXTH CIRCUIT

*Bemis Bros. Bag Co. v. Feidelson* (denying stay pending appeal from decision of Judge Martin, western district of Tennessee, denying temporary injunction and dismissing bill of complaint).

## NINTH CIRCUIT

*Carlisle Lumber Co. v. Hope*, 83 F. (2d) 92 (denying stay pending appeal from decision of Judge Cushman, western district, Washington, denying temporary injunction and dismissing bill of complaint).

## (d) Stays pending appeal granted:

## EIGHTH CIRCUIT

*General Motor Corp. v. Bajork*;  
*Wilson & Co. v. Gates*.

## UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

*A. C. Lawrence Co. v. Madden*;  
*Beaver Mills v. Madden*;  
*Bethlehem Shipbuilding Corp. v. Madden*;  
*Brown Shoe Co. v. Madden*;  
*Cabot Mfg. Co. v. Madden*;  
*Hatfield Wire & Cable Co. v. Madden*;  
*Heller Bros. Co. v. Lind*;  
*J. C. Pilgrim v. Madden*;

The above cases in the United States Court of Appeals for the District of Columbia were decided November 9, 1936, the stays vacated and the dismissal of the suits by the lower court affirmed.

## X. DIVISION OF ECONOMIC RESEARCH

The interpretation and administration of law must always be performed, whether consciously or not, within some framework of social and economic facts. In some instances the facts are simple, easily determined, and the application of the law is free from doubt. Frequently the situation is complicated and can best be understood by a knowledge, based on research, of the facts and practices surrounding it. When questions affecting the commerce clause of the constitution are involved, the Supreme Court of the United States has said that "the precise line can be drawn only as individual cases arise."<sup>1</sup>

The Supreme Court has frequently, as in *Stafford v. Wallace*<sup>2</sup> or *Muller v. Oregon*,<sup>3</sup> recognized the value of factual material.

It is noteworthy that while the brief for the Government in *Stafford v. Wallace* did not stress the economic factors in the case the Supreme Court recognized their importance. After summarizing the findings of the Federal Trade Commission and the extensive congressional hearings as to the conditions in the stockyards and meat-packing industry, the Supreme Court decided that the Packers and Stockyards Act was a valid regulation and protection of the "stream of commerce" flowing through the "throat" of the stockyards and packing plants.<sup>4</sup>

Both administrative and legal requirements demand a knowledge of the detailed and frequently technical factors in each case which comes before the National Labor Relations Board for decision and before the courts for enforcement. It is the purpose of the Division of Economic Research to supply this information as accurately and completely as possible. In every case, as a matter of routine procedure, certain basic data are introduced into the record at hearings. Tables which give the major causes of labor disputes for industries in general, and for the particular industry, if available, are placed in the record. These tables are, at our request, prepared and certified by the United States Department of Labor. They indicate that a large proportion of all strikes and lockouts are caused by such "unfair labor practices" of employers as are forbidden by the National Labor Relations Act; namely, discharge of employees for union activity, discrimination against union members, support and domination of company unions, and refusal to recognize and bargain with duly selected employee representatives.

Much of the information as to the merits of a complaint must of necessity be developed locally by the staff of the regional office, but supplementary material concerning the labor relations of the com-

<sup>1</sup> *A. L. A. Schechter Poultry Corporation v. United States*, 295 U. S. 495.

<sup>2</sup> See note 4.

<sup>3</sup> 208 U. S. 412, 419 (1908). It may not be amiss, in the present case, before examining the constitutional question, to notice the course of legislation as well as expressions of opinion from other than judicial sources. In the brief filed by Mr. Louis D. Brandeis, for the defendant in error, is a very copious collection of all these matters. \* \* \*

<sup>4</sup> *Stafford v. Wallace*, 258 U. S. 495, 499-502 (1922).

pany, or in the industry, is prepared in the more important cases. Frequently it is found that the merits of the complaint cannot be determined and the labor policy of the employer cannot be fully understood without knowledge of the history of labor relations of the employer and of the industry in general.

A study of the history of labor relations in the various industries, particularly the causes of unrest, supports the findings of Congress that unfair labor practices, as defined by the National Labor Relations Act, have led to strikes and lockouts which interrupt interstate commerce. The actual work of the Division in this respect is perhaps best explained by example.

Through the use of reports of congressional investigations, statements of employers published in their trade journals, and the testimony of witnesses, it was established that the long and bitter history of industrial controversy in the steel industry arose principally from the denial of the rights of self-organization and collective bargaining to the employees. It was found that in the period following the Civil War the Amalgamated Association of Iron, Steel & Tin Workers became well established in the industry.<sup>1</sup> About 1890 the small independent companies which had been dealing with the union began to be merged into larger corporations or trusts. Almost without exception the new managements of these larger corporations refused to continue contractual relations with the union.<sup>2</sup> This led to a series of bitter strikes, perhaps the most notorious of which was the Homestead (Pa.) strike of 1892 at the plant of the Carnegie Steel Co. The congressional committee which investigated the use of Pinkerton detectives in that strike found that negotiations had been abruptly terminated because of the hostility of the company to the union. The report concluded that if the company had abandoned its "autocratic and uncompromising" attitude and bargained with the union "an agreement would have been reached between (it) and the workmen, and all the trouble which followed would thus have been avoided."<sup>3</sup>

Similarly after the formation of the United States Steel Corporation in 1901 its board of directors announced that "they would not recognize trade unionism in any of their plants where it was not already in existence, and they would oppose any extension of it."<sup>4</sup> A series of strikes followed, culminating in 1909 in a last struggle of the union to maintain itself after the corporation had "notified the union that it would not deal with them any further in any of its plants."<sup>5</sup> Other companies followed the lead of the United States Steel Corporation and the union was excluded from plants of the larger corporations until the organizing campaign and strike of 1919. The Senate committee which heard the evidence as to the

<sup>1</sup> Testimony of John A. Fitch, *Transcript of Record of Hearings in Steel Cases: Jones & Laughlin* (April 1936), p. 610.

<sup>2</sup> At the hearings on the Wheeling Steel Corporation case it was established that for 40 years prior to the merger which formed the corporation in 1920 the union had maintained a continuous contractual relationship with one of the merged companies. During the 1919 steel strike the union observed its contract and the company was able to operate continuously. At the first occasion for renewal of the contract after its formation the Wheeling Steel Corporation refused to bargain with the union. A bitter strike followed in which the corporation succeeded in temporarily destroying the union. *Transcript of Record, Wheeling Steel Corporation hearings*, pp. 167-177 (Nov. 19, 1935).

<sup>3</sup> House of Representatives, Committee on the Judiciary, *Employment of Pinkerton Detectives*, Rept. 2447, 52d Cong., 2d sess., p. XI (1893).

<sup>4</sup> Jones & Laughlin transcript, op. cit., p. 613.

<sup>5</sup> *Ibid.*, p. 614.

causes of that strike found that Judge Gary, chairman of the board of directors of the United States Steel Corporation, had refused to recognize or meet with the workers' committee. This opposition to the union, coupled with the desire of the workers for collective bargaining, was the underlying cause of the strike.<sup>1</sup>

Again in the period since 1933 the workers in the steel industry have attempted to assert their right to self-organization and collective bargaining. The employers through their own organization, the American Iron and Steel Institute, have opposed unionization by the Amalgamated Association of Iron, Steel and Tin Workers, and have attempted to limit organization to a plant or company union basis.<sup>2</sup> It is noteworthy that while the institute professes a belief in self-organization of workers for collective bargaining its members have successfully opposed all attempts to hold impartial elections under governmental supervision to determine employee representatives.

The direct effect on interstate commerce of the labor disputes which followed this opposition of the employers to collective bargaining was demonstrated by evidence from a number of sources, chiefly of employer origin. A strike or lock-out interrupts the flow of raw materials into a plant as well as the outgoing stream of the finished product. In some instances the movement of these materials constitutes the major portion of the business of an interstate carrier.<sup>3</sup> An industry-wide strike such as that of 1919 in steel disrupts not only the movement of materials and products to and from a given plant, but paralyzes the entire industry, and industries dependent upon it.<sup>4</sup> Orders and shipments of raw materials such as pig iron were quickly affected:<sup>5</sup> The steel strike has brought the scrap market virtually to a standstill. Dealers are making no effort to effect sales, knowing that were mills willing to buy they would not accept shipments. Practically all mills in this territory (Cleveland) have notified dealers to suspend shipments at once.<sup>6</sup>

Repercussions of the strike not only upon the railroads but upon the lake carriers were traced at the hearings:

The effect of the steel strike has already reached the Lake Superior ore mines. Operations at one of the large open-pit properties has been suspended and further curtailment is expected. \* \* \* A sharp halt has been made in the ore movement. Most steel plants have stopped off shipments so that the greater part of ore is now going on the docks. \* \* \* Boats have been delayed several days in unloading ore cargoes and many are being tied up after discharging their cargoes.<sup>7</sup>

<sup>1</sup> 66th Cong., 1st sess., S. Rept. 289, *Investigating Strike in the Steel Industries (1919)*, pp. 4 and 11 (Board Exhibit No. 54, Wheeling Steel).

<sup>2</sup> American Iron and Steel Institute, *Collective Bargaining in the Steel Industry* (June 1934) (Board Exhibit No. 55, Wheeling Steel Corporation).

<sup>3</sup> In-bound and out-bound shipments to and from the Wheeling Steel Corporation constituted between 75 and 80 percent of all freight carried by the Norfolk & Western Railroad at Portsmouth, Ohio (Wheeling Steel hearings, op. cit., p. 22). About 97 percent of all the business of the Pittsburgh & Lake Erie Railroad at Aliquippa, Pa., depended upon the continued operation of the Jones & Laughlin works (Jones & Laughlin transcript, op. cit., p. 133).

<sup>4</sup> *Iron Age*, the standard trade publication of the industry, reported that "general effect" of the strike "was to paralyze the iron and steel market. Not knowing just what they had to face, some mills directed their representatives to cease taking orders, and under no circumstances to promise definite deliveries against contracts or specifications." *Iron Age*, Sept. 22, 1919 (Jones & Laughlin, op. cit., p. 927).

<sup>5</sup> Jones & Laughlin record, op. cit., p. 929-30.

<sup>6</sup> *Ibid.*, 930.

<sup>7</sup> *Iron Age*, Sept. 26, 1919 (Jones & Laughlin record, p. 932). A significant recognition by businessmen of the fact that labor disputes may interrupt scheduled shipments of goods is the nearly universal practice of inserting in contracts for delivery of goods a clause which waives liability for delays due to strikes and specified "acts of God."



Further evidence as to the direct effect of this great strike in the steel industry was supplemented by data showing the effects of other strikes in the steel industry. In addition, examples of the effects on interstate commerce of strikes in other industries were introduced in the steel cases. In turn, in nonsteel cases reference is made to strikes in the steel industry.

It is rather obvious upon reflection, but often overlooked, that there is no precise line between industries which are engaged primarily in transportation and communication, and, incidentally, do certain processing or "manufacturing" and those which perform complicated processing or manufacturing and, incidentally, are dependent upon transportation. Yet while the array of industries permits no precise line each industry presents different characteristics, and at the extremes there are wide differences in the dependence upon, or the participation in, interstate commerce. The factual approach to the constitutional problems would accordingly vary with the industry under consideration.

In transportation and communication cases a brief description of the activities of the company may suffice to establish the fact that it is a part of an industry subject to numerous accepted regulations of the Federal Government which are based on the commerce power. In such cases the jurisdiction of the Board is beyond reasonable doubt, provided that the regulation is reasonable, and the emphasis of the evidence shifts to a description of labor relations in the industry, and the similarity of the problems with those effectively met by nearly identical legislation on the railroads.<sup>1</sup> The contrast of the peaceful organized relationship between employers and employees under the Railway Labor Act and the turbulent relations which characterize water and motor transportation further supports the findings of Congress that our statute would reduce interferences with the flow of commerce.

In the case of a new transportation or communication industry somewhat more complete information is placed in the record, particularly in regard to the business of the company in question. Thus in a leading case<sup>2</sup> in the motor-bus industry the growth of the industry was traced from its recent local origins to its present status as a Nation-wide transportation system.<sup>3</sup> The company, with its affiliates, was shown to operate an integrated passenger and property-transportation service which with traffic agreements, interline tariffs, and connecting schedules reached every State in the Union.<sup>4</sup> The company's extensive corporate structure and property holdings in various States in the Union, the interlocking directorates, and controlling interests of the railroads were established.<sup>5</sup> Competition between the motor-bus system and the railroads and the desire for efficient transportation were shown to have given rise to demands for protective legislation paralleling that applying to the railroads.

<sup>1</sup> The experience of the railroads is concisely summarized by the National Mediation Board in its *First Annual Report*, June 30, 1935.

<sup>2</sup> Greyhound Lines, Inc., N. L. R. B. 1.

<sup>3</sup> Statistics indicating the rapid extension of the motor-bus industry in terms of passengers carried, miles of route, etc., were conveniently assembled by the National Association of Motor Bus Operators in *Bus Facts* in 1935, introduced as Board exhibit 22.

<sup>4</sup> These points were readily established through the company's published consolidated time tables, descriptive folders, and maps (Board exhibits 11 to 14).

<sup>5</sup> *Moody's Manual of Investments* (Board exhibit 8); statements filed with the Securities and Exchange Commission (Board exhibit 9), reports of the Pennsylvania Greyhound Corporation (board exhibit 15), and *Annual Report of the Pennsylvania Railroad Co.* to the Interstate Commerce Commission (Board exhibit 17).

After extensive congressional hearings<sup>1</sup> the Motor Carrier Act was passed, which did not contain provisions for collective bargaining and employee freedom of organization because it was intended that motor transportation would be under the jurisdiction of the National Labor Relations Board.<sup>2</sup>

It is again trite to observe that changing technology and improved transportation methods are effecting a revolution in the means of producing and distributing goods. Yet, beyond a superficial familiarity with the more obvious indications of change, and an intimate knowledge of the restricted field in which they labor, few people are aware of the scope and significance of such changes. What has been the effect of new techniques, such as the moving conveyor or continuous production processes, or of new industries, such as packaging and forwarding, upon the traditional distinction between commerce and manufacturing, or upon the concept of the "flow of commerce"? These are questions which the courts have only partially examined and determined.

The Supreme Court has established certain principles in regard to the concept of interstate commerce which have served as guides to the research of the Division. In *Stafford v. Wallace* the Supreme Court decided that the regular movement of livestock from the western ranges and feeding grounds to the stockyards and packing houses in the Middle West and thence as meat products to the markets in the East constituted a "flow of commerce." Upon similar grounds that "the flow of wheat from the West to the mills and distributing points of the East and Europe"<sup>3</sup> constituted a stream of interstate commerce the Supreme Court upheld the validity of the Grain Futures Act of 1922. A detailed knowledge of other industries precludes the easy assumption that the "streams" of meat and grain products thus protected by Federal legislation are unique.

As cases have arisen in different industries, the Division of Economic Research has made studies to determine whether in fact such conditions existed. It was found that the concept of the flow of commerce was applicable to other industries. Such revolutionary production techniques as the moving conveyor or the recent tendency toward "continuous-production mills"<sup>4</sup> result in a literal flow of materials within the plant. These production methods bring with them other techniques which render production more dependent upon the uninterrupted flow of interstate commerce. The moving conveyor or assembly line depends upon complete uniformity and interchangeability of the parts assembled. Granted uniformity, such

<sup>1</sup> The Board was asked to take judicial notice of the hearings before the Senate Committee on Interstate Commerce on S. 1620, the Motor Carrier Act, 74th Cong., 1st sess., Feb. 22 to Mar. 6, 1935. S. Rept. 482 and H. Rept. 1645 were introduced as Board exhibits 23 and 24.

<sup>2</sup> Statement of Senator Wheeler, chairman of Committee on Interstate Commerce, on floor of Senate, Congressional Record, 74th Cong., 1st sess., vol. 79, p. 5887.

<sup>3</sup> *Chicago Board of Trade v. Olsen*, 262 U. S. 1, 36 (1922). It may be remarked that the effect of strikes upon interstate commerce is frequently more direct and the stoppage of the flow of commerce more complete than the practices now regulated by the Packers and Stockyards Act and the Grain Futures Act. In this case also the Supreme Court recognized the factual circumstances recorded in House Committee on Agriculture future trading hearings, 66th Cong., 3d sess., pp. 909-910, and the report of the Federal Trade Commission in response to S. Res. 133 (1922) on manipulations of the grain market.

<sup>4</sup> The lay reader may well ask whether steel "racing along at the rate of 2,000 feet per minute" in the rolls of a new continuous-production steel mill is "at rest" or in the stream of commerce. See United States Steel Corporation *U. S. Steel News*, September 1936, p. 5.

parts may be made wherever they can be produced most efficiently without regard to State lines.<sup>1</sup> To reduce inventory costs deliveries of parts are scheduled only as needed.<sup>2</sup> A single plant may depend for its continued operation upon the daily delivery of parts from a dozen or more States.<sup>3</sup> Thus a stoppage of production due to a labor dispute, either at any one of the parts plants or at the assembly plant, would directly and immediately interrupt the interstate flow of goods to the assembly plant and in turn the movement of the finished product from the plant to the various States.<sup>4</sup> Furthermore, as in the case of the automobile industry, production or assembly may be largely concentrated in a single State. Here, indeed, is a "throat" of commerce difficult to distinguish in its pertinent economic aspects from that described by the Supreme Court in *Stafford v. Wallace*:

Other industries may be described as "fractional", that is, they perform only a small part of the operations necessary to the completed product. An example is the textile dyeing and finishing industry. Commonly the processor does not even own the materials worked upon, but receives them, often from beyond State lines, performs some simple operation on a commission basis, and immediately sends the product on. Here again the regular and rapid movement of goods to and from the plants may constitute a flow of commerce. In common with the grain and flour milling industry these fractional industries make use of the transit privilege. This privilege, which is based on the theory that the product in question is in continuous transportation, permits the manufacturer to receive his raw materials, process them, and reship them at the through freight rate rather than at the higher local rates.<sup>5</sup>

In contrast to these fractional industries are those which are highly integrated, owning their basic raw materials and producing a finished commodity.<sup>6</sup> These industries also commonly obtain their raw materials from a number of different States and may send their finished products through their own agencies to every State in the Union. In at least one essential respect such industries frequently differ from other nonintegrated industries, and that is in the ownership of the means of transporting their raw materials and finished products. A large proportion of the employees of a manufacturing business

<sup>1</sup> One automobile manufacturer announced that his company purchased parts and materials from approximately 6,000 business establishments located in practically every State in the Union. Alfred Reeves, vice president of Automobile Manufacturers Association, Recovery Rolls on Rubber Tires, reprinted in *Motor*, January 1935 (*International Harvester Co.*, case C-41, transcript of record, Board exhibit 71, p. 10).

<sup>2</sup> Leon Henderson, *Preliminary Report on Study of Regularization of Employment and Improvement of Conditions in the Automobile Industry* (1935), Summary, pp. 4, 28; and G. B. Galloway, editor, *Industrial Planning Under Codes* (1935), p. 323 (*International Harvester*, *ibid.*, Board exhibit 71).

<sup>3</sup> It may be difficult in some cases, if not impossible, to tell when interstate transportation "comes to rest" and "manufacturing" begins. The parts are frequently loaded directly from the freight cars to the moving conveyors and continue in motion until the assembled product emerges from the other end of the conveyor to complete its journey to the consumer.

<sup>4</sup> This is not simply a speculative assumption. Such stoppages are a matter of record. E. g., the strike at the Toledo plant of the Chevrolet Motor Co. in brief for the National Labor Relations Board, *Freuhauf Trailer Co. v. National Labor Relations Board*, in the United States Circuit Court of Appeals for the Sixth Circuit, October term (1935).

<sup>5</sup> The theory of transit is explained by W. V. Hardie, Bureau of Traffic, Interstate Commerce Commission, Jones & Laughlin Record, *op. cit.*, Board exhibit 34, printed in National Labor Relations Board *Governmental Protection of Labor's Right to Organize* (1936), pp. 117-121.

<sup>6</sup> Economic material for this type of industry has been most completely assembled for the steel industry, but similar characteristics are exhibited by a number of other industries.

may thus be directly engaged in interstate transportation and communication.

In conducting its research, the Division has found that some industries have been subject to numerous investigations, and much material on labor relations and business and industrial organization was available. In other industries the Division was confronted by a surprising paucity of sources. In every case some original research was necessary on certain subjects. Wherever possible the Division has relied upon previous governmental investigations, particularly congressional hearings and Federal Trade Commission reports. Of special value also have been employer publications, employer association releases and trade papers. In numerous instances no published information on the subject was available and it was necessary to arrange for testimony by expert witnesses, or to conduct original research. In order to secure maximum results with a small research staff, and in anticipation of the need of research data, each member of the staff has been assigned definite responsibility for several industries. In this manner the Division is collecting at least general information and a workable bibliography for a number of the more important industries, so that when data are hurriedly needed, as is bound to be the case in the work of the Board, it can more readily be compiled upon short notice. The following industries are being treated in this manner: Automobile, flour milling, meat packing and stockyards, men's clothing, motor transport, newspaper publishing press services, petroleum, radio, rubber, shipbuilding, shipping, steel, telegraph, telephone, textiles.

In addition to the research which falls under the broad headings of reasonableness of the legislation and extent of the jurisdiction of the Board, the Division has made special studies of such subjects as boycotts, industrial elections, and majority rule. Occasionally information on other topics is obtained in response to requests from Board members, the legal staff or the regional offices. In the preparation of decisions and the writing of briefs the Division has been consulted. All of the work of the Division is done in cooperation with the legal staff and after consultation with it and the members of the Board. Only those subjects are investigated which will be directly helpful in the administration of the law or which it is believed will assist the courts in the determination of the scope of the jurisdiction of the Board.

## XI. PUBLICATIONS DIVISION

### A. PUBLIC RELATIONS PROBLEMS

Employers engaged in interstate business, together with their employees, are the persons affected by the provisions of the National Labor Relations Act. It was important at the start that the act, and the methods adopted by the Board to administer it, be well known to both.

Labor's cooperation in giving the act a chance to prove its worth could be taken for granted, since the statute was passed specifically to support workers in the exercise of rights long acknowledged, yet long frustrated by the practices of many employers.

It could not be expected that industry would welcome the act with open arms. Time and patience are required to make the collective bargaining relationship between an employer and his organized workers fruitful for both. The employer must give up cherished habits of dictating terms of employment before he can expect his employees to take a reasonable and thoughtful attitude toward mutuality of interest in the enterprise in which they are both engaged. And, because some employers gain temporary advantage by suppressing organization among their workers and cutting wages, it is also true that no employer can have full enjoyment of that stability which working agreements provide until the majority of his competitor employers give acceptance to the procedure of collective bargaining.

The act, then, called upon industry to display a degree of long-range statesmanship.

The Seventy-third Congress spoke the public mind when it declared in favor of equality of bargaining power between employers and employees. But to make that equality a reality, instead of a pious declaration of principle, Congress wrote into the act a means of eliminating practices by which industry in the past has deliberately frustrated collective bargaining. However, floods of expensive propaganda were poured out to defeat the National Labor Relations Act when it was proposed in 1934, and again in 1935 when Congress finally adopted the present act. Most active in the movement was the National Association of Manufacturers, which urged opposition to the act in tens of thousands of printed circulars, advising that the law was unconstitutional and stating that its aims were inimical to industry.

In the category of obstructionists may also be placed the Liberty League, an association of advocates for industry, which also took it upon itself to declare the act unconstitutional, and made available a sample brief which later found Nation-wide use by less experienced lawyers grateful for this technical reinforcement.

In their professional capacity a few legal advisers to the Manufacturer's Association and to the Liberty League actually did the thinking on this important legislation for the Nation's most representative employer group. Yet their advice failed completely to explore

whether it might not be wise to encourage worker organizations, to the end that employer-employee relations might be placed on a known contractual basis. On the contrary, this very probable avenue to the solution of industrial disputes—costing the Nation hundreds of millions a year—was completely shelved in favor of a virtual incitation to industry to defy the act.

The situation was ironical in that industry generally concedes the worth of collective bargaining as an abstract conception. In fact, while showing utmost reluctance to being subjected to Board inquiries, no important industrialist has as yet admitted that he has employed the unfair labor practices which Congress found were likely to frustrate collective bargaining.

#### B. BOARD POLICY IN ITS PUBLIC RELATIONS

A quasi-judicial agency, beginning operations in an atmosphere of hostility from a powerful economic group has unique problems in its public relationships. Anxious as it may be that its aims be understood, it cannot with propriety plead its cases in the newspapers, nor even answer the challenges of its opponents. In the long run it must entrust its good name to a record of diligent administration of the law.

In facing this problem the Board had some guidance from the former National Labor Relations Board's experience with it. Before accepting its first case, the new Board adopted these points of public relations policy:

Since a charge of unfair labor practice represents an unsupported allegation, it would be unfair to the employer to publicize it.

If investigation finds evidence to support the charges, the Board may make its complaint public.

Hearings shall be public.

Decisions of the Board will necessarily be too lengthy and too technical for general distribution. The findings of fact and conclusions will therefore need to be digested for public release.

The recommendations of a trial examiner may be made public if filed as an intermediate report with the Board.

The above covers all the stages in the conduct of a Board case. It will be noticed that during the investigation period the Board's agents refrain from trying the case in the newspapers. No merit attaches to this continence, for a contrary action would violate the Board's position as a fact-finding, impartial body. Moreover, the results have been good—664 of the 1,068 cases filed with the Board and its regional offices (through June 30, 1936) have been closed during this first stage before formal action was taken. In six additional cases, the intermediate report found no violation.

While it is no more than fair to employers to withhold publicity about labor disputes during the time the Board's agents are checking the truth of charges, this lack of newspaper coverage obviously has kept the public in ignorance of how effectively the Board has served the community by preventing disputes from developing into strikes.

Of such valuable negotiation the public hears little. What it does see is the newspaper reports of Board actions against these employers

who firmly oppose the holding of elections and fact-finding hearings by the Board.

Most news articles and comment on the Board have related to cases where employers challenge the Board's jurisdiction and fight its activities at every turn. While freely admitting the right of industry to seek a legal clarification of its position under the act, the effect on public opinion of industry's widespread intransigence has been to create the impression that the Board's activities are characteristically punitive, rather than leading constructively toward industrial peace.

No agency primarily concerned with forbidding can entirely escape the appearance of being a negative instrument. In its first years the Federal Trade Commission (established to forbid unfair trade practices) suffered a like characterization and was subjected to like attacks.

### C. ACTIVITIES OF PUBLICATIONS DIVISION

In facing its public-relations problems the Board has resisted the temptation to answer the clamor raised against the act, and has confined itself solely to the distribution of facts about its operations.

A publications division has served as a channel of all information. This has relieved the Board members and attorneys from interruption and has placed responsibility for material given out into the hands of one person.

The principal sources of inquiry about the Board's activities are: Newspapers, labor organizations, industry (to some extent), other Government agencies, legislators, research workers, students, libraries, trade journals, etc.

The status of Board cases, the contents of the examiner's reports, the texts of Board decisions, and the course of litigation cases, are the subjects of constant inquiry by telephone and personal interview.

The director of publications prepares for mimeograph release the following type of information:

Digests of Board decisions.

Digests of Board orders for election.

Announcements of consent elections to be held, and, later, their results.

Digests of complaints (in important cases).

A pamphlet, the National Labor Relations Board and Its Work has been prepared in order to satisfy many requests for a concise handling of the subject. A mailing list is maintained for those who request regular receipt of material issued, including the monthly summary of Board activities. No names are placed on the list except by such specific request. Under these circumstances the list, on July 1, 1936, was as follows:

Receiving releases (includes newspapers, labor organizations, trade journals, students, etc.)	835
Regional offices	21
Receiving decisions (includes some on the general mailing list plus lawyers, industries, etc.)	290
Total	1,146

At intervals the list is checked to cull out those who fail to reply affirmatively to a letter asking whether the material is still wanted.

## XII. PRINCIPLES ESTABLISHED

The principles established by the Board in its decisions have been developed in a great variety of situations, and, once developed, have been used for the development of new principles as new situations have been presented to the Board. In this chapter, an attempt has been made to set forth all of the important principles which the Board has enunciated in the different types of cases.<sup>1</sup>

For convenience, this chapter has been divided into seven sections:

A. Interference, restraint, and coercion in the exercise of the rights guaranteed in section 7 of the act: This section deals with cases arising under section 8, subdivision (1), of the act.

B. Discrimination for the purpose of encouraging or discouraging membership in a labor organization: This section deals with cases arising under section 8, subdivision (3), of the act.

C. Collective bargaining: This section deals with cases arising under section 8, subdivision (5), of the act.

D. Domination and interference with the formation or administration of a labor organization and contribution of financial or other support to it: This section deals with cases arising under section 8, subdivision (2), of the act.

E. Investigation and certification of representatives: This section deals with proceedings arising under section 9 (c) of the act. Such proceedings normally include the taking of secret ballots to determine representatives for the purpose of collective bargaining.

F. The unit appropriate for the purposes of collective bargaining: This section is devoted to a discussion of the principles developed by the Board pursuant to its power under section 9 (b) of the act. The question of the appropriate unit is an issue in cases arising both under section 8, subdivision (5), and section 9 (c) of the act.

G. Administrative remedies: This section deals with the remedies which the Board has applied, pursuant to section 10 (c) of the act, in cases in which it has found that employers have engaged in unfair labor practices.

### A. INTERFERENCE, RESTRAINT, AND COERCION IN THE EXERCISE OF THE RIGHTS GUARANTEED IN SECTION 7 OF THE ACT

Section 7 of the act provides that—

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

<sup>1</sup> For a complete index to the decisions, the reader is referred to the index to the published volume of decisions of the Board to July 1, 1936. In this chapter, this volume is cited as "I. N. L. R. B.", even though the first volume of the published decisions of the old National Labor Relations Board has, in the past, been similarly cited. The name of a case is cited in full the first time it is discussed in the body of each section of this chapter.



Section 8, subdivision (1), of the act makes it an unfair labor practice for an employer to—

interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

Anyone familiar with the history of the efforts of American workers to organize in unions of their own choice knows that the tactics used by employers to bar effective organization takes many forms. The cases decided by the Board merely confirm this.

At the outset it should be explained that the Board has held that a violation by an employer of any of the other four subdivisions of section 8 of the act is, by the same token, a violation of section 8, subdivision (1). Such a conclusion is too obvious to require explanation. In fact, almost all of the cases in which the Board has found a violation of section 8, subdivision (1), are cases in which the principal offense charged fell within some other subdivision of section 8. The explanation for this is, apparently, that even though an employer may be engaging in antiunion activities in violation of section 8, subdivision (1), unions do not seek protection of the act until such activities take such drastic form as bring them within the provisions of some other subdivision, as, for example, the discriminatory discharge of union members (which comes within subdivision (3)), the domination of or interference with the formation or administration of a labor organization (which comes within subdivision (2)), or a refusal to bargain collectively (which comes within subdivision (5)). Consequently, in reading this section it should be borne in mind that in almost all of the cases discussed the activities of the employers went beyond those set forth, resulting in violations of other subdivisions of section 8 of the act, and are therefore also discussed in other sections of this chapter. However, they are set forth here because the Board has also held that they constitute violations of section 8, subdivision (1), and because they involve elements which cannot be discussed appropriately in the other sections.

In view of the attention attracted by the activity of the La Follette subcommittee of the Senate Committee on Education and Labor,<sup>1</sup> it is not inappropriate to begin the discussion of interference with the right to organize with cases wherein the evidence disclosed that the employer engaged in some form of espionage. Because of the notoriety being given to the activities of the professional labor spy, it may be forgotten that an employer who wishes to spy on the union activities of his employees does not always hire outside detectives to do so. The Board's cases show that frequently employers and officials of corporations are not above engaging personally in the crasser and more primitive forms of this activity. (*Matter of Friedman-Harry Marks Clothing Company, Inc., and Amalgamated Clothing Workers of America*,<sup>2</sup> where the president and superintendent of the company secretly observed two union meetings to see who attended; *Matter of Pennsylvania Greyhound Lines, Inc., Greyhound Management Company, Corporations, and Local Division No. 1063 of the Amalgamated Association of Street, Electric*

<sup>1</sup> Appointed pursuant to S. Res. 266, 74th Cong.

<sup>2</sup> 1 N. L. R. B. 411, 432.

*Railway and Motor Coach Employees of America*;<sup>1</sup> *Jones and Laughlin Steel Corporation, and Amalgamated Association of Iron, Steel and Tin Workers of North America, Beaver Valley Lodge No. 200*;<sup>2</sup> and *Matter of Washington, Virginia and Maryland Coach Company, and Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Local Division No. 1079, et al.*,<sup>3</sup> where the vice president of the respondent bus company attended a union meeting disguised in a bus operator's cap.)<sup>4</sup> The cases also show that it is a common practice to use or attempt to use regular employees for the purpose of espionage,<sup>5</sup> although they also show that American workmen are likely to rebuff invitations to spy on their fellows.<sup>6</sup>

The cases heard and decided by the Board have revealed what the hearings of the LaFollette committee have since disclosed to be a widespread practice in American industry—the use of professional “labor spies” and “undercover” men. *Matter of Fashion Piece Dye Works, Inc., and Federation of Silk and Rayon Dyers and Finishers of America*<sup>7</sup> illustrates this system in perhaps its simplest form. Here, unorganized employees, aggrieved by the failure of the management to fulfill a promise to raise their wages, met a union organizer on a street corner one evening and arranged to organize a union. The next morning the men were discharged after being told by the general manager that he had had a detective watch their movements the night before.

The extent to which the spy system has developed is illustrated in *Matter of Fruehauf Trailer Company and United Automobile Workers Federal Labor Union No. 19375*.<sup>8</sup> Shortly after a union was organized in the plant, the company engaged a nationally known detective agency for espionage work. An operative of the agency was given a regular job in the plant, but the company's vice-president testified that his duties were “to ferret out the union activities of the men” and to keep the company “informed of what was going on”. The operative joined the union, and eventually became its treasurer. He was thus able to furnish the company with the names of active union men: The result was that the latter were discharged, and the union was destroyed.<sup>9</sup>

The Board did not find in all of the cases discussed that the espionage activities in themselves constituted violations of section 8, subdivision (1); in most of them such activities were pursuant to schemes to discriminate against union members and leaders, and thus evidence of espionage was taken as part of the case under

<sup>1</sup> 1 N. L. R. B. 1.

<sup>2</sup> N. L. R. B. 503.

<sup>3</sup> 1 N. L. R. B. 769.

<sup>4</sup> See also *Matter of Jones & Laughlin Steel Corporation and Amalgamated Association of Iron, Steel Tin Workers of North America, Beaver Valley Lodge, No. 200*, 1 N. L. R. B. 503.

<sup>5</sup> *The Friedman-Harry Marks Clothing Co.*, 1 N. L. R. B. 411, 432; *Matter of Protective Motor Service Company and Twenty-Five Employees*, 1 N. L. R. B. 639.

<sup>6</sup> *The Greyhound case*, 1 N. L. R. B. 1; *Matter of Fruehauf Trailer Company and United Automobile Workers Federal Labor Union No. 19375*, 1 N. L. R. B. 68; *Matter of Foster Brothers Manufacturing Company, Inc., and Federal Labor Union, Local No. 20137*, 1 N. L. R. B. 880.

<sup>7</sup> 1 N. L. R. B. 285.

<sup>8</sup> 1 N. L. R. B. 68.

<sup>9</sup> For other cases involving the use of detectives, see the *Matter of Pennsylvania Greyhound Lines, Inc.*, 1 N. L. R. B. 1; *Matter of Mackay Radio & Telegraph Company and American Radio Telegraphists' Association, San Francisco Local No. 8*, 1 N. L. R. B. 201; and *Matter of Brown Shoe Co., Inc., and Boot and Shoe Workers' Union, Local No. 655*, 1 N. L. R. B. 803.

section 8, subdivision (3). Having found, however, that subdivision (3) had been violated, the Board also found that subdivision (1) had been violated. However, it is clear, and the Board has so held, that it is an independent violation of subdivision (1) for an employer to engage in any form of espionage in connection with union activities. Nothing is more calculated to interfere with, restrain, and coerce employees in the exercise of their right to self-organization than such activity. Even where no discharges result, the information obtained by means of espionage is invaluable to the employer, and can be used in a variety of ways to break a union.

Apart from discrimination against union members and leaders, and threats of such discrimination,<sup>1</sup> the most common form of interference with self-organization engaged in by employers is to spread propaganda against unions and thus not only poison the minds of workers against them but also indicate to them that the employers are antagonistic to unions and are prepared to make this antagonism effective. In the final analysis, most of this propaganda, even when it contains no direct or even indirect threat, is aimed at the worker's fear of loss of his job. The cases discussed below have shown that where the propaganda does not take effect, the result is discharge.

The subject matter of such propaganda falls into several distinct patterns. Thus, a common theme is the threat to move the plant or to go out of business altogether if the union succeeds in organizing the employees.<sup>2</sup> Such a threat may be peculiarly effective in highly mobile industries in which the movement by employers to unorganized and low-wage areas is notorious, as, for example, the clothing industry,<sup>3</sup> or the shoe industry.<sup>4</sup> It is even more effective where the plant is essential to the economic life of the community, for in such cases<sup>5</sup> the pressure which can be exerted on the workers is overwhelming. This is due not only to the fact that if the workers are discharged, they have to seek jobs in other communities, but also because in such a community the employer, in his antiunion drive, can count on the support of other business interests and even of public officials.<sup>6</sup> Such support may sometimes take illegal and violent forms.<sup>7</sup>

A very common form of propaganda is that which attempts to convince employees that unions and union organizers serve ulterior purposes and are not at all interested in the welfare of the workers. Thus, employers frequently denounce unions as rackets or refer to

<sup>1</sup> The subject of discrimination is treated in sec. B of this chapter: Discrimination for the Purpose of Encouraging or Discouraging Membership in a Labor Organization, p. 77.

<sup>2</sup> *Matter of National Casket Company, Inc., and Casket Makers Union 19559*, 1 N. L. R. B. 963.

<sup>3</sup> *Matter of Friedman-Harry Marks Clothing Company, Inc.*, 1 N. L. R. B. 411, 432.

<sup>4</sup> *Matter of Ansin Shoe Manufacturing Co. and Shoe Workers' Protective Union, Local No. 80*, 1 N. L. R. B. 929; *Matter of Ansell Shoe Manufacturing Co. and Shoe Workers' Protective Union, Local No. 80*, 1 N. L. R. B. 939; and *Matter of Brown Shoe Co., Inc., and Boot and Shoe Workers' Union, Local No. 655*, 1 N. L. R. B. 803.

<sup>5</sup> See, for example, *Matter of Somerville Manufacturing Co. and International Ladies' Garment Workers' Union, Local No. 149*, 1 N. L. R. B. 864; *Matter of Brown Shoe Co., Inc., and Boot and Shoe Workers' Union, Local No. 655*, 1 N. L. R. B. 803.

<sup>6</sup> *Matter of Somerville Manufacturing Co. and International Ladies' Garment Workers' Union, Local No. 149*, 1 N. L. R. B. 864.

<sup>7</sup> *Matter of Brown Shoe Co., Inc., and Boot and Shoe Workers' Union, Local No. 655*, 1 N. L. R. B. 803. Other cases in which the threat was made to move or to go out of business are *Matter of Atlas Bag & Burlap, Inc., and Milton Rosenberg, Organizer, Burlap and Cotton Bag Workers, Local Union, No. 2469, affiliated with United Textile Workers Union*, 1 N. L. R. B. 292; *Matter of Oregon Worsted Co. and United Textile Workers of America, Local 2435*, 1 N. L. R. B. 915; and the *Washington, Virginia & Maryland Coach Company*, 1 N. L. R. B. 769.

organizers as racketeers.<sup>1</sup> Sometimes the statements in this connection are more specific and homely—if the worker joins the union, he would “be down here stopping bullets” while the union organizer would be “sitting in the hotel smoking a cigar”;<sup>2</sup> the dues the workers have paid to the union would have bought them clothes which the organizers are wearing.<sup>3</sup> Sometimes the statements go much further, and include denunciations of unions as being “rotten”, “corrupt”, and “crooked”, and of workers who would belong to them as being “nothing but a bunch of cutthroats”,<sup>4</sup> and of union organizers as “thugs and highwaymen”,<sup>5</sup> or as “reds and Communists.”<sup>6</sup> The cases cited in the footnote include other illustrations of statements directed against unions as such, and at the fear on the part of workers that they will be discharged if they join unions.<sup>7</sup>

In most of the cases discussed, the antagonism of the employers to unions finally resulted in the discharge of union members and leaders, and thus illustrate that whenever the milder forms of persuasion are ineffective, employers are prepared to use harsher methods.

Interference, restraint, and coercion by employers with the right of self-organization take many other directions. One of the most despicable is the employment of professional “union-wreckers”. In *Matter of Brown Shoe Co., Inc., and Boot and Shoe Workers' Union, Local No. 655*,<sup>8</sup> the company employed one A. A. Ahner as its “Industrial relations counselor.” The description of Mr. Ahner and of his activities is worth quoting at length from the decision of the Board:

\* \* \* Actually, Ahner has a reputation as a professional strikebreaker and union-wrecker, and employer of thugs, sluggers, and armed guards in his strike-breaking activities, a planter of labor spies in factories and labor organizations, an organizer of “independent” or company unions on behalf of employers, has been implicated in “framing” union leaders, and is notorious in the St. Louis

<sup>1</sup> *Matter of Atlas Bag & Burlap Co., Inc., and Milton Rosenberg, Organizer, Burlap and Cotton Bag Workers Local Union No. 2469, affiliated with United Textile Workers Union*, 1 N. L. R. B. 292; *Matter of Wheeling Steel Corporation and the Amalgamated Association of Iron, Steel, and Tin Workers of North America*, N. R. A. Lodge No. 155, Goodwill Lodge No. 157, Rod and Wire Lodge No. 158, Golden Rule Lodge No. 161, Service Lodge No. 163, 1 N. L. R. B. 699; and *Matter of Jones & Laughlin Steel Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Beaver Valley Lodge No. 200*, 1 N. L. R. B. 503.

<sup>2</sup> *Matter of Greensboro Lumber Co. and Lumber and Sawmill Workers Local Union No. 2688, United Brotherhood of Carpenters and Joiners of America*, 1 N. L. R. B. 629. Apparently employers believe there is something inherently objectionable in the thought that union organizers smoke cigars. See *Matter of National Casket Co., Inc., and Casket Makers Union 19559*, 1 N. L. R. B. 963; *Matter of Jones & Laughlin Steel Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Beaver Valley Lodge No. 200*, 1 N. L. R. B. 503.

<sup>3</sup> *Matter of Bell Oil & Gas Co. and Local Union 258 of the International Association of Oil Field, Gas Well, and Refinery Workers of America et al.*, 1 N. L. R. B. 562.

<sup>4</sup> *Matter of Jones & Laughlin Steel Corporation and Amalgamated Association of Iron Steel and Tin Workers of North America, Beaver Valley Lodge No. 200*, 1 N. L. R. B. 503.

<sup>5</sup> *Matter of Protective Motor Service Co. and Twenty-five Employees*, 1 N. L. R. B. 639.

<sup>6</sup> *Matter of Radiant Mills Co. and J. R. Scarbrough and George Splak*, 1 N. L. R. B. 274.

<sup>7</sup> *Matter of the Associated Press and American Newspaper Guild*, 1 N. L. R. B. 788; *Matter of Cleveland Chair Co. and Local No. 1759, United Brotherhood of Carpenters and Joiners of America*, 1 N. L. R. B. 892; the *Matter of Pennsylvania Greyhound Lines, Inc.*, 1 N. L. R. B. 1, where an employee was told “to keep out of the union if he and his wife and kids did not want to go hungry”; *Matter of Oregon Worsteds Co. and United Textile Workers of America, Local 2455*, 1 N. L. R. B. 915, where an employee was told, “\* \* \* you will have a lot better chance of keeping in the good graces of the company if you do not have any affiliation with the union”; *Matter of Smith Cabinet Manufacturing Co. and National Furniture Workers, Local No. 3*, 1 N. L. R. B. 950, in which the workers were told that a union is “an unfit thing for the factory and not good for the men.”

<sup>8</sup> 1 N. L. R. B. 803.

industrial area for successful terrorism in his chosen field. He operates in Missouri, Illinois, Iowa, Kansas, possibly Indiana, and "wherever we are sent." The annual gross income of both his corporations is about \$100,000. Ahner's activities have been widely publicized in articles in the St. Louis Post Dispatch, an important daily newspaper of wide circulation and national reputation. His activities have been condemned by formal resolution of the Central Trades and Labor Unions of St. Louis. He is well known as the head of a "slugging outfit" and for interference, often by violence, with self-organization of workers and their concerted activities for collective bargaining, and mutual aid and protection" (pp. 813-14).

The same case shows that, if other methods fail, such persons do not hesitate to slug union organizers. In such activities employers may sometimes count on the cooperation of local officials. In *Matter of Jones & Laughlin Steel Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America, Beaver Valley Lodge No. 200*,<sup>1</sup> a union organizer who was distributing union pamphlets "was set upon by two persons who beat him severely. He was then taken before a justice of police, fined \$5, and refused a transcript of record for purposes of appeal. Until he left town he was trailed by automobiles owned by the respondent" (p. 510). In the same case the president of the union, while "on his way to work (at night) \* \* \* was followed by a Jones & Laughlin police car. He lost sight of the car. Passing an alley, he was stopped and was struck. He asked for police protection at the station. He was told: 'Get the hell out of here. You don't deserve protection'" (p. 511).

The Board has condemned a variety of other acts by employers as interference with self-organization. Since unions derive their power from collective action and maintain morale by acting through representatives, employers realize that the fighting strength of unions may be sapped if employees are approached individually. In *Matter of Atlas Bag and Burlap Company, Inc., and Milton Rosenberg Organizer, Burlap & Cotton Bag Workers Local Union No. 2469 affiliated with United Textile Workers Union*,<sup>2</sup> after the union had attempted to bargain collectively with the employer, individual contracts of employment were framed and foisted upon the employees. The Board held that this constituted interference, restraint, and coercion in the exercise of the right to self-organization. In other cases the Board has had occasion to point to similar action by employers, although under the circumstances of the cases no violation of section 8, subdivision (1), was found, because such action was usually part of other activity which it was alleged fell within other subdivisions of section 8. In three cases<sup>3</sup> employers solicited strikers individually to return to work; in each of the cases the strikers were represented by a union. In view of the other facts of the cases, it was alleged, and the Board found, that the employer had refused to bargain collectively and thus had violated section 8, subdivision (5), of the act. However, if the cases be taken together, a strong implication emerges that the Board would hold that the solicitation of strikers individ-

<sup>1</sup> 1 N. L. R. B. 503.

<sup>2</sup> 1 N. L. R. B. 292.

<sup>3</sup> *Matter of Columbian Enameling & Stamping Co. and Enameling & Stamping Mill Employees Union*, No. 19694, 1 N. L. R. B. 181; *Matter of Jeffery-De Witt Insulator Company and Local No. 455, United Brick and Clay Workers of America*, 1 N. L. R. B. 618; and *Matter of S. L. Allen & Company, Incorporated, and Federal Labor Union Local No. 18526*, 1 N. L. R. B. 714.

ually to return to work, where they are represented by a union, would amount to interference, restraint, and coercion. An unusual variation of this situation occurred in *Matter of The Timken Silent Automatic Company and Earl P. Ormsbee, Chairman, Executive Board, Oil Burner Mechanics Association*,<sup>1</sup> where the employer negotiated successfully with one of the strikers, apparently a leader among his fellows, for settlement of the strike, even though the employer knew that union representatives were speaking for the strikers. Here also, however, the case arose under subdivision (5) of section 8.

A particularly flagrant form of intimidation of individual employees is to call them in, one by one, and ask them bluntly whether or not they are members of the union, as in *Matter of Greensboro Lumber Company and Lumber and Sawmill Workers Local Union No. 2688, United Brotherhood of Carpenters and Joiners of America*.<sup>2</sup>

The Board has also held that other activities of employers which have the effect of injuring the morale of union members constitute interference, restraint, and coercion. In the *Matter of Brown Shoe Company, Inc.*,<sup>3</sup> the union had succeeded in obtaining a seniority agreement with the company. This was the union's "outstanding achievement in collective bargaining." The agreement was not definite as to duration. After it had been in effect about a year, during which time the union succeeded in effecting many adjustments thereunder, the company, without conferring with the union, arbitrarily announced its abrogation at a time when the members of the union were most in need of its protection. The Board said:

The seniority rule was the union's principal protection against discrimination by the respondent during the seasonal slump. The respondent's arbitrary abrogation of the seniority rule, in the light of the background situation \* \* \* is to be interpreted only as a blow aimed directly at the union. Consequently the respondent's termination of the arrangement without conferring with the union constitutes interference, restraint, and coercion of its Salem plant employees in the exercise of their right to collective bargaining guaranteed by the act (p. 829).

The refusal of employers to deal with representatives who are not in their employ, thereby discouraging affiliation with an outside union, is best illustrated in the cases arising under the collective bargaining provision, subdivision (5) of section 8. However, the Board has held that such a refusal is a violation of section 8, subdivision (1). In *Matter of Oregon Worsted Company and United Textile Workers of America, Local 2435*,<sup>4</sup> a committee of five union members, consisting of three employees and two nonemployees, requested the management to confer concerning the reinstatement of employees who had struck. The management refused to permit the nonemployees to participate in the conference and insisted on meeting them separately. The Board held that the—

insistence upon dividing the committee into employee and nonemployee groups constituted an arbitrary and flagrant violation of the employees' right to self-organization. It is not for the employer to dictate the form of representation the employees shall have. By (this) conduct \* \* \* respondent clearly indicated to the employees its dislike for outside representation and preference for dealing directly with its own employees (p. 922).

<sup>1</sup> 1 N. L. R. B. 335.

<sup>2</sup> 1 N. L. R. B. 629.

<sup>3</sup> 1 N. L. R. B. 803.

<sup>4</sup> 1 N. L. R. B. 915.

## B. DISCRIMINATION FOR THE PURPOSE OF ENCOURAGING OR DISCOURAGING MEMBERSHIP IN A LABOR ORGANIZATION

Section 8, subdivision (3), of the act provides that it is an unfair labor practice for an employer—

By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

As interpreted by the Board, this section is not intended to interfere generally with the freedom of an employer to hire and discharge as he pleases. It limits this freedom, however, in one important respect. He may not use it in such a manner as to foster or hinder the growth of a labor organization. He may employ anyone or no one; he may transfer employees from task to task within the plant as he sees fit; he may discharge them in the interest of efficiency or from personal animosity or sheer caprice. But, in making these decisions he must not differentiate between one of his employees and another, or between his actual and his potential employees, in such a manner as to encourage or to discourage membership in a labor organization.

### 1. DISCRIMINATION IN REGARD TO HIRE OR TENURE OF EMPLOYMENT<sup>1</sup>

The simplest type of case arising under this language is the frank and open discharge of certain employees for taking part in union activities.<sup>2</sup> Thus, in *Matter of Protective Motor Service Company, a Corporation, and Twenty-five Employees*,<sup>3</sup> it appeared from the record that when Marsh, the president of a company engaged in the operation of armored trucks, learned that his employees were considering joining a local of the International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, he expressed to them his violent objection to the proposal, stated that he would not tolerate a union in the company, and warned several of them that if they continued to engage in union activities they would be discharged. When, in spite of these warnings, an organization meeting was held, Marsh sent spies to it, learned who attended, and within the next few weeks discharged 18 employees, including those who he thought had been the leaders in the movement. To one of

<sup>1</sup>The Board has in most cases used the words "hire" and "tenure of employment" jointly in its findings to connote any type of discrimination which affects an individual's status as an employee rather than his salary or working conditions.

<sup>2</sup>In no case has a respondent admitted in its pleadings or at the hearing that it has discriminated against employees because of their union activity. Frequently, however, clear evidence of discrimination has gone uncontradicted. See, for example, *Matter of Fruehauf Trailer Company and United Automobile Workers Federal Labor Union No. 19375*, 1 N. L. R. B. 68; *Matter of Timken Silent Automatic Company, a Corporation, and Earl P. Ormsbee, Chairman, Executive Board, Oil Burner Mechanics Association*, 1 N. L. R. B. 335; and *Matter of Fashion Piece Dye Works, Inc., a Corporation, and Federation of Silk and Rayon Dyers and Finishers of America*, 1 N. L. R. B. 285.

<sup>3</sup>1 N. L. R. B. 639.

the last to go, Marsh admitted that the reason for his discharge was his attendance at the union meeting. At the hearing, though Marsh denied he had dismissed the men for union activity, he went on to assert that they were discharged "for attempted formation of this society, for the purpose of interfering with our duties and the duties of the men. I consider this a breach of discipline." The Board found in these discharges a clear instance of discrimination in regard to tenure of employment which was discouraging to membership in a labor organization.

In most cases of alleged discriminatory discharge, however, the employer has insisted that the dismissals had nothing whatsoever to do with organizational activity, but were for inefficiency, insubordination, infraction of rules, or other legitimate cause. Since each case has of necessity been decided upon its own facts, the Board's method in weighing the evidence can best be understood through the examination of certain typical situations and the decisions they called forth.

In *Matter of Jones & Laughlin Steel Corporation and Amalgamated Association of Iron, Steel & Tin Workers of North America, Beaver Valley Lodge, No. 200*,<sup>1</sup> the complaint alleged that the respondent corporation had discharged and refused to reinstate certain of its employees and had demoted another for joining and assisting a labor organization. The respondent's answer admitted the discharges and demotion but stated that they were for inefficiency and infraction of the respondent's rules. At the hearing evidence was introduced showing that the respondent for years had carried on a bitter and determined campaign to prevent union organization of its plant, that officers and union organizers had been followed by the respondent's private police and had been mysteriously set upon and beaten on the public streets, and that before an open meeting of the union could be held in Aliquippa, where the respondent's plant was located, the Governor of the State had to intervene and send in State police.<sup>2</sup>

An employee-representation plan had been installed by the respondent in its plant without, apparently, ever having been submitted to the employees. In June 1935, shortly after the National Industrial Recovery Act had been declared unconstitutional, an election was held under this plan, and the respondent's foremen and supervisors were active in urging the employees to vote. The discharges began shortly after. In all cases the pattern of events was

<sup>1</sup> 1 N. L. R. B. 503.

<sup>2</sup> As to the materiality of this evidence, it should be noted that the Board, when confronted by doubtful cases, has placed special emphasis upon the background of the controversy and upon the intentions of the employer as therein manifested. As it said in its first decision:

"In reaching a decision between these conflicting contentions the Board has had to take into consideration the entire background of the discharges, the inferences to be drawn from testimony and conduct, and the soundness of the contentions when tested against such background and inferences. (Compare *Norris v. Alabama*, 294 U. S. 587 (1930).) Moreover, as the Supreme Court has stated, 'Motive is a persuasive interpreter of equivocal conduct', so that the Board may properly view the activities of the respondents in the light of the manifest interest and purpose described above. (*Texas & New Orleans Railroad Co. v. Brotherhood of Railroad & Steamship Clerks*, 281 U. S. 548 (1930).'" See *Matter of Pennsylvania Greyhound Lines, Inc., et al. and Local Division No. 1063 of the Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America*, 1 N. L. R. B. 1 at p. 23.

For further examples see *Matter of Radiant Mills Company, a Corporation, and J. R. Scarbrough and George Spisak*, 1 N. L. R. B. 274; *Matter of Oregon Worsteds Company, a Corporation, and United Textile Workers of America, Local 2435*, 1 N. L. R. B. 915; and *Matter of Brown Shoe Company, Inc., and Boot and Shoe Workers Union, Local No. 655*, 1 N. L. R. B. 803.



similar. The discharged employees had all been active members of the union since its inception; those first discharged had been officers, others had been leaders in organizing the Italian and Negro employees; all had publicly distributed union literature and handbills and solicited membership.<sup>1</sup> Several had been urged to vote at the employee-representation-plan elections and had refused. Though alleged by the respondent to have been discharged for inefficiency, all were employees of long standing, having been employed by the respondent for periods varying from 5 to 26 years. The specific errors or faults urged by the respondent as occasioning the discharges were either routine and unimportant or, apparently, awkwardly arranged by the respondent's foremen to justify a discharge. A tractor driver of 8 years' standing, said to be one of the best at the plant, was discharged for forgetting to close a door. Another, for 14 years a coal washer, was discharged because it was alleged that a sample of his work revealed it to be poorly done. There was evidence that samples of his work had not, in fact, been taken. A machinist's helper, for 10 years, was suddenly assigned to operate a drill press, a machine for which he had no training, and, when he spoiled the work, was fired. A crane operator for 15 years was discharged for leaving his keys on a bench. Another crane operator, discharged for failing to "try his limit stops" in a manner which he considered useless and dangerous, heard the foreman telephoning someone immediately afterward and saying, "He didn't try his limit stops. Is that enough?" Other employees had committed errors similar to some of these advanced as reasons for the discharges without being penalized. All of the employees discharged had been frequently questioned and warned concerning their union activities. In the face of this evidence the Board rejected the respondent's contention that it had discharged the employees for inefficiency and disobedience to its rules and found that the discharges constituted discrimination in regard to hire and tenure of employment calculated to discourage membership in the Association of Iron, Steel, and Tin Workers of North America, Beaver Valley Lodge, No. 200.

In considering the frequent assertions of employers that discharges were for inefficiency rather than for union activities, the Board has given weight to such factors as length of total employment, experience in the particular position from which the employee was discharged, efficiency ratings, the testimony of foremen or other em-

<sup>1</sup>The Board has frequently found persuasive evidence of discrimination in an unduly high percentage of union members or union leaders in a series of discharges. See, for example, *Matter of Pennsylvania Greyhound Lines, Inc., and Local Division No. 1063 of the Amalgamated Association of Street Electric Railway and Motor Coach Employees of America et al.*, 1 N. L. R. B. 1 (of 7 men discharged in 2 days, all were union members); *Matter of Radiant Mills Company*, 1 N. L. R. B. 274 (all employees in 1 shift recalled after a shut-down except the president and vice president of the union); *Matter of United Aircraft Manufacturing Corporation and Industrial Aircraft Lodge, No. 119, Machine Tool and Foundry Workers Union*, 1 N. L. R. B. 236 (almost all employees rehired after a stoppage except 18 union officers, including the president, vice president, treasurer, and members of the executive, grievance, and shop committees); *Matter of E. R. Haffelinger Co., Inc., and United Wall Paper, Crafts of North America, Local No. 6*, 1 N. L. R. B. 760 (8 union members in 1 department of respondent's plant discharged; the only employee retained was nonunion); and *Matter of Washington, Virginia, and Maryland Coach Company, a Corporation, and Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America, Local Division No. 1019 et al.*, 1 N. L. R. B. 769 (out of 21 employees discharged in 3 days, all were union members). See also *Matter of Brown Shoe Company, Inc., and Boot and Shoe Workers Union, Local No. 655*, 1 N. L. R. B. 803 (lay-off of as many nonunion as union employees and retention of union leaders held immaterial in a situation where the employer was striking through the lay-off at the seniority rule, which was the chief fruit of the union's activity).

ployees, and the treatment given to other employees of apparently equal or less efficiency. In so doing it has not been attempting itself to estimate the employee's efficiency. Its only concern has been to determine whether, regardless of how inefficient the employee might be, his discharge was not caused by his union activities rather than by the manner in which he did his work. Long service does not necessarily mean that an employee is efficient; it does indicate that the employer has not considered his possible inefficiency to be serious enough to merit his discharge. Similarly, the fact that employees were retained who had committed errors as serious as those advanced as reasons for the discharge does not imply that discharge for such an error would not have been justified. It indicates merely that the error was not in fact the motivating cause for the severance of employment. Thus in *Matter of General Industries Co., a Corporation, and Hobart Flenner, et al.*,<sup>1</sup> the discharged employees admitted that they had been guilty of horseplay and mischief during working hours which had retarded production and might well have warranted their dismissal. But in the light of all the evidence, the Board found that this horseplay had been used by the respondent merely as a convenient pretext for ridding itself of employees who were particularly zealous in pressing for union organization. Likewise, in *Matter of National New York Packing & Shipping Company, Inc., and Ladies Apparel Shipping Clerks Union, Local No. 19953*,<sup>2</sup> insubordination of a union employee was found to have been a pretext rather than the motivating cause of his discharge.<sup>3</sup>

The Board has found that the words "discrimination in regard to hire or tenure of employment" includes cases not only of outright discharge but also of temporary lay-offs or furloughs where discriminatorily applied.<sup>4</sup> Thus in *Matter of Greensboro Lumber Co. and Lumber and Sawmill Workers Local Union, No. 2688, United Brotherhood of Carpenters and Joiners of America*<sup>5</sup> the record revealed that shortly after the union was organized in the respondent's plant, May, the respondent's secretary and treasurer, told an employee he understood a union was being organized in the plant, that he wanted it stopped, and that anyone who joined the union would be fired immediately. During the following days May questioned other employees about the union; and when a representative of the union called to request May, as respondent's agent, to engage in collective bargaining, May responded by calling all the employees before him, one at a time, and asking them whether they belonged to "this man's

<sup>1</sup> 1 N. L. R. B. 678.

<sup>2</sup> 1 N. L. R. B. 1009.

<sup>3</sup> In this connection it should be noted that an employee need not actually be a union member or engaged in union activities for his discharge to constitute a discriminatory violation of the act. All that is necessary is that his discharge be so obviously the result of the employer's belief that he is a member or is so engaged that it will have a discouraging effect upon union membership. *Matter of Fashion Piece Dye Works, Inc., a Corporation, and Federation of Silk and Rayon Dyers and Finishers of America*, 1 N. L. R. B. 285.

<sup>4</sup> As the Board said in *Matter of Pennsylvania Greyhound Lines, Inc., and Local Division No. 1063 of the Amalgamated Association of Street Electric Railway and Motor Coach Employees of America et al.*, 1 N. L. R. B. 1, at p. 36:

"If the motivating cause of the discriminatory change in the tenure of employment was interference with the employees in the exercise of their guaranteed rights or discouragement of membership in a labor organization, a violation is established whether the change is temporary or permanent."

For similar language see *Matter of Benjamin Fainblott and Marjorie Fainblott Doing Business Under the Firm Names and Styles of Somerville Manufacturing Company and Somerset Manufacturing Company and International Ladies' Garment Workers Union*, Local No. 149, 1 N. L. R. B. 864, at p. 874.

<sup>5</sup> 1 N. L. R. B. 629.

organization." Though a majority replied in the affirmative, the respondent refused to bargain with the union. Two days later the respondent shut down its mill completely for 2 weeks, then for a few weeks more operated on a reduced scale, using only one shift, and returned to its normal two-shift basis 2 days before the hearing in the case. During the period when the mill was completely shut down, 8 or 10 nonunion men were employed to stack lumber in the yard, though at least 1 of them was not by trade a stacker, and though several union members were stackers and had been working as such at the time of the shut-down. When the mill first reopened, operating only during the day, the employees usually on the night shift were employed instead of those on the day shift, May testifying that since the night shift had fewer union members the management considered it to be the more "loyal." When the mill recommenced its two-shift schedule the night shift was transferred back to night work.

The Board stated in its decision that though it considered that the original shut-down of the mill 2 days after the union's effort to bargain collectively was suspicious, the only evidence in the record as to the reason for the shut-down was May's statement that there were few orders and no lumber immediately available to fill them. It refrained, therefore, from finding that the shut-down constituted a lock-out of the union employees, as alleged in the complaint. The employment of unexperienced nonunion stackers while the union stackers previously employed were idle, however, was found to have been an act of discrimination discouraging to union membership. The use for day work of the employees habitually on the night rather than the day shift was similarly found to have been an act of discrimination. In regard to one union member who was not reemployed on the reopening of the mill, the Board found evidence in the record that he had been feigning sickness as a means of leaving his work and concluded that he had not been discharged for union activity.

## 2. DISCRIMINATORY REFUSAL TO REINSTATE EMPLOYEES AFTER A SHUT-DOWN, LOCK-OUT, OR STRIKE

A discharge or a lay-off for union activities, the Board has held, may violate section 8, subdivision (3), whether or not it is accompanied by a discriminatory refusal to reinstate.<sup>1</sup> Conversely, a refusal to reinstate certain employees because of their union affiliations has been held to violate the act, even though the original severance of employment was entirely innocent, as in the case of a shut-down for lack of business, or was caused by the employees themselves, as in the case of a strike.<sup>2</sup> Ordinarily a refusal to reinstate has not

<sup>1</sup> *Matter of Pennsylvania Greyhound Lines, Inc., and Local Division No. 1063 of the Amalgamated Association of Street Electric Railway and Motor Coach Employees of America et al.*, 1 N. L. R. B. 1; *Matter of Brown Shoe Company, Inc., and Boot and Shoe Workers, Local No. 655*, 1 N. L. R. B. 803.

<sup>2</sup> *Matter of Mackay Radio & Telegraph Company, a Corporation, and American Radio Telegraphists Association, San Francisco Local No. 3*, 1 N. L. R. B. 201; *Matter of Segall Maigen, Inc., a Corporation, and International Ladies' Garment Workers' Union, Local No. 50*, 1 N. L. R. B. 749; *Matter of Ford A. Smith, Blanche F. Smith, and William C. Shanks, partners doing business as Smith Cabinet Manufacturing Company and National Furniture Workers, Local No. 3*, 1 N. L. R. B. 950. The Board has held it immaterial in such cases whether or not the individuals discriminated against retained their status as employees of the respondent at the time they were refused reemployment. In *Matter of Algonquin Printing Company and United Textile Workers of America, Local No. 1044*,

been found in such cases unless the employees have applied for reinstatement either in person or through their representatives<sup>1</sup> and been denied.<sup>2</sup> Where, however, employers have themselves taken the initiative in recalling certain employees and it has been understood that only those so notified would be reemployed, application for reinstatement by the employees themselves has not been required.<sup>3</sup> And where the original severance of employment was itself an unfair labor practice, the Board has held that the employer was under a duty to offer reinstatement to his employees and their failure to apply for it was immaterial.<sup>4</sup>

The Board has considered an offer of reemployment, conditioned upon the abandonment by the employee of his union activities and the renunciation of his rights under the act, to be equivalent to a refusal to reinstate.<sup>5</sup> Likewise, it decided in *Matter of Sunshine Hosiery Mills and Branch No. 55, American Federation of Hosiery Workers*,<sup>6</sup> that rejection of an offer of immediate reemployment by employees while out on strike, did not prevent a finding that a later refusal to reinstate them was a violation of section 8, subdivision (3).<sup>7</sup> Rejection of such an offer at the close of a strike, however, merely because the wages offered were too low, has been held to

1 N. L. R. B. 264, an employer, having refused reinstatement to two union leaders after a temporary shut-down of his plant, argued that since they had ceased to be his employees within the meaning of the act, a refusal to reemploy them could not be an unfair labor practice. The Board, in rejecting this argument, said, at p. 269:

"Sec. 8, subdivision (3), in forbidding discrimination in employment, is not limited to those who are employees at the time of the discrimination. It forbids discrimination in regard 'to hire' generally. The purpose of the provision is, it is true, to protect employees in their right to self-organization. But surely a refusal by an employer to rehire a former employee because of his union activities which are well known to his former fellow workers discourages the latter and so restrains them in the exercise of their right to self-organization."

For a similar holding see *Matter of Radiant Mills Company, a Corporation and J. R. Scarbrough and George Spisak*, 1 N. L. R. B. 274. Though the individuals discriminated against need not be his employees, the act of discrimination must be directly chargeable to the respondent or his officers and agents. Discrimination by one employer will not ground a finding of a violation of sec. 8, subdivision (3), against another even when carried on at the same time as the other's antiunion campaign, and against employees who work part time for both employers. *Matter of Bell Oil & Gas Company and Local Union 258 of the International Association of Oil Field, Gas Well, and Refinery Workers of America et al.*, 1 N. L. R. B. 562.

<sup>1</sup> The sufficiency of a collective application for reinstatement was upheld in *Matter of United Aircraft Manufacturing Corporation*, 1 N. L. R. B. 236. See also *Matter of Benjamin Fainblott and Margorie Fainblott, Individuals, Doing Business Under the Firm Names and Styles of Somerville Manufacturing Company and Somerset Manufacturing Company*, 1 N. L. R. B. 864; and *Matter of The Sands Manufacturing Company and Mechanics Educational Society of America*, 1 N. L. R. B. 546.

<sup>2</sup> *Matter of Timken Silent Automatic Company, a Corporation, and Earl P. Ormsbee, Chairman, Executive Board, Oil Burner Mechanics Association*, 1 N. L. R. B. 335; and *Matter of Jeffrey-DeWitt Insulator Company and Local No. 455, United Brick and Clay Workers of America*, 1 N. L. R. B. 618.

<sup>3</sup> *Matter of Atlanta Woolen Mills and Local No. 2307, United Textile Workers of America*, 1 N. L. R. B. 316; *Matter of United Aircraft Manufacturing Corporation*, 1 N. L. R. B. 236; *Matter of Friedman-Harry Marks Clothing Company, Inc., and Amalgamated Clothing Workers of America*, 1 N. L. R. B. 411, 432; and *Matter of Columbia Radiator Company and International Brotherhood of Foundry Employees, Local No. 79*, 1 N. L. R. B. 847.

<sup>4</sup> *Matter of Ford A. Smith, Blanche F. Smith, and William C. Shanks, partners, doing Business as Smith Cabinet Manufacturing Company and National Furniture Workers, Local No. 3*, 1 N. L. R. B. 950; and *Matter of Washington, Virginia, and Maryland Coach Company, and Amalgamated Association of Street Electric Railway and Motor Coach Employees of America, Local Division No. 1019 et al.*, 1 N. L. R. B. 769.

<sup>5</sup> *Matter of Benjamin Fainblott and Marjorie Fainblott, individuals doing business Under the Firm Names and Styles of Somerville Manufacturing Company and Somerset Manufacturing Company and International Ladies Garment Workers Union, Local No. 119*, 1 N. L. R. B. 864. Compare the decisions holding that such conditions also discriminate in regard to a "term or condition of employment", discussed infra, p. 83.

<sup>6</sup> 1 N. L. R. B. 664.

<sup>7</sup> The Board in this case said at p. 673: "Respondent's argument proceeds upon the assumption that the employees' refusal to abandon a strike at its height in response to a threat that they will be replaced if they fail to return justifies the inference that they have relinquished all interest in their jobs and may be stricken from the employee lists. This contention betrays a fundamental misconception of the rights created by the act. It is elementary that rejection of employment under these circumstances connotes a determination to improve the conditions of a job to which the striker intends to return. The act specifically guarantees the right to strike and provides that the striker retains the

preclude a finding that the employer had in that instance been guilty of a discriminatory refusal to reinstate.<sup>1</sup>

Some employers have attempted to avoid a finding of discrimination against certain of their employees by making it impossible to reinstate them for any reason. Thus in *Matter of Mackay Radio & Telegraph Company, a Corporation, and American Radio Telegraphist's Association, San Francisco Local No. 3*,<sup>2</sup> the respondent, by blacklisting certain of its employees and letting it be understood they would not be reemployed, caused them to delay their requests for reemployment until their positions had been filled by other men, and then argued that its refusal to reemploy them was not based upon their union record but was due simply to the fact that there were no vacancies for them. The Board ruled that as the blacklist was based upon the union activities of the employees and was the direct cause of their delayed application, the employer's action was equivalent to a discriminatory refusal to reinstate. In *Matter of Santa Cruz Fruit Packing Company, a corporation, and Weighers, Warehousemen, and Cereal Workers, Local 38-44, International Longshoremen's Association*,<sup>3</sup> the respondent employer was found to have locked out a group of his employees for their union activities and to have contracted out his work to another concern in order to avoid reemploying them. The Board found from the record that in spite of the contract the respondent was in fact able to reinstate the employees and therefore found in his refusal a violation of section 8, subdivision (3). It stated, however, that its decision did not imply the validity under the act of such a contract entered into with such a motive.<sup>4</sup>

### 3. DISCRIMINATION IN REGARD TO ANY TERM OR CONDITION OF EMPLOYMENT

The Board has construed the words "any term or condition of employment" to apply, on the one hand, to the treatment of employees and, on the other hand, to the terms on which employment is granted. The first construction was adopted in *Matter of Wheeling Steel Corporation and Amalgamated Association of Iron, Steel and Tin Workers of North America et al.*,<sup>5</sup> where an employer was found to have discriminated by ordering its foremen to prefer members of a company-dominated union to members of an outside union, by demoting a foreman for giving an outside union man a good job, and by paying higher wages to company union members than to outside union members for equivalent work. In *Matter of Clinton Cotton Mills and*

status of an employee while he is engaged in this form of concerted activity. To permit the employer to discriminate against strikers when they apply for reinstatement merely because they had previously refused an offer to return to work is, of course, a deliberate rebuke to concerted action by members of a labor organization."

<sup>1</sup> *Matter of Pioneer Pearl Button Company and Button Workers' Union, Federal Local 20026*, 1 N. L. R. B. 837. The holding does not, of course, imply that a later refusal of the employer to reinstate these employees, if discriminatory and discouraging to union membership, might not be found to be a violation of sec. 8, subdivision (3).

<sup>2</sup> 1 N. L. R. B. 201.

<sup>3</sup> 1 N. L. R. B. 454.

<sup>4</sup> Compare with these cases *Matter of Canvas Glove Manufacturing Works, Inc. and International Glove Makers Union, Local No. 88*, 1 N. L. R. B. 519, in which the Board held that a refusal by an employer to sign an application for a certificate required by State law which would permit a 16-year-old girl to be employed amounted to a refusal to reinstate her.

<sup>5</sup> 1 N. L. R. B. 699.

*Local No. 2182, United Textile Workers of America*,<sup>1</sup> on the other hand, the language was applied to the act of an employer in conditioning reemployment after a shut-down upon membership in a company-dominated union. Similarly in *Matter of Atlas Bag and Burlap Company, Inc., and Milton Rosenberg, Organizer, Burlap & Cotton Bag Workers Local Union No. 2469, affiliated with United Textile Workers Union*,<sup>2</sup> the Board held that the act of an employer in forcing certain employees to sign individual contracts of employment which deprived them of the right to strike, demand union recognition or question discharges, discriminated against these employees in regard to terms or conditions of employment.

#### 4. THE CLOSED-SHOP PROVISIO

The provision in section 8, subdivision (3), permitting employees to require membership in a labor organization as a condition of employment if such a labor organization is the representative of the employees in the appropriate collective bargaining unit is qualified in one important respect. The labor organization must not have been established, maintained, or assisted by any action defined in the act as an unfair labor practice. The proviso with its qualification has been interpreted only once by the Board. In *Matter of Clinton Cotton Mills*,<sup>3</sup> mentioned above, the respondent having shut down its plant, concluded a closed shop contract with the "Clinton Friendship Association", a labor organization which it had caused to be organized among certain of the employees at its plant. On reopening its mill, it posted a notice stating that pursuant to this contract only members of the Clinton Friendship Association would henceforth be employed. Ninety-six employees who refused to join the Friendship Association were refused employment. The respondent urged that since a closed shop contract was permitted by the proviso, its conduct did not constitute discrimination within the meaning of the act. The Board replied that as the Friendship Association had been established by acts defined in section 8, subdivision (2), of the act as unfair labor practices<sup>4</sup> and hence came within the qualification of the proviso, the general provisions of section 8, subdivision (3), applied, and the respondent must be found to have engaged in a discriminatory refusal to reinstate the 96 employees.

### C. COLLECTIVE BARGAINING

#### 1. PROVISIONS OF THE ACT RELATIVE TO COLLECTIVE BARGAINING

Section 8, subdivision (5), of the act provides that it shall be an unfair labor practice for an employer "to refuse to bargain collec-

<sup>1</sup> 1 N. L. R. B. 97.

<sup>2</sup> 1 N. L. R. B. 292.

<sup>3</sup> 1 N. L. R. B. 97.

<sup>4</sup> As to the reasons for this finding in regard to the Clinton Friendship Association, see the discussion of the decisions interpreting sec. 8, subdivision (2) below, at p. 127. It should be noted, however, that the Board held that the qualification applied to unfair labor practices in the establishment, maintenance, or assistance of a labor organization which occurred before as well as after the effective date of the act. Otherwise, said the Board: "An employer could perpetuate an organization of his creation prior to July 5, 1935, by entering into a closed-shop agreement with it after July 5, 1935, thus enabling it to thrive on the support afforded by the agreement and permitting it to dispense with the constant assistance obtained from company domination and support which would otherwise be necessary."

tively with the representatives of his employees, subject to the provisions of Section 9 (a).” Section 9 (a) of the act provides that:

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

## 2. THE DUTY TO BARGAIN COLLECTIVELY

(a) *The elements of bargaining.*—Collective bargaining is something more than the mere meeting of an employer with the representatives of his employees; the essential thing is rather the serious intent to adjust differences and to reach an acceptable common ground.<sup>1</sup> In *Matter of the Timken Silent Automatic Company and Earl P. Ormsbee, Chairman, Executive Board, Oil Burner Mechanics Association*,<sup>2</sup> the Board, in finding that the respondent refused to bargain collectively with the representatives of its employees, stated:

From these facts it is clear that the respondent categorically refused to bargain with the union as the representative of its employees and made it clear that it was undisposed to explore with an open mind the possibilities of making an agreement with its employees. It is true that officers of the respondent did meet union committees from time to time; after being surprised into a display of downright hostility at the initial approach of the union, the officers were courteous and discreet and ready to discuss casual grievances and demands. The demands, however, were treated as suggestions upon which the respondent, if it acted, acted, not on the basis of a collective bargain or agreement, but of grace. When asked to consider an agreement regulating prospectively relations between it and its employees in a comprehensive manner, the respondent refused to discuss the idea or any detail of it and made it clear that it had a fixed policy precluding such discussion. It thus refused in its dealings with its employees to accede even to the forms and the procedure of collective bargaining<sup>3</sup> (pp. 341-2).

In *Matter of Atlantic Refining Company and Local Nos. 310 and 318, International Association of Oil Field, Gas Well and Refinery Workers of America*,<sup>4</sup> the failure on the part of the respondent to approach the negotiations with an open mind and to make a reasonable effort to reach a common ground of agreement was held to be in violation of the act. The Board stated:

Collective bargaining means more than the discussion of individual problems and grievances with employees or groups of employees. It means that the employer is obligated to negotiate in good faith with his employees as a group, through their representatives, on matters of wages, hours, and basic working conditions and to endeavor to reach an agreement for fixed period of time<sup>5</sup> (p. 359).

In *Matter of The Sands Manufacturing Company and Mechanics Educational Society of America*,<sup>6</sup> the Board said:

It is hardly necessary to state that from the duty of the employer to bargain collectively with his employees there does not flow any duty on the part of the

<sup>1</sup> *Matter of the Canton Enameling & Stamping Company and Canton Lodge No. 812, International Association of Machinists*, 1 N. L. R. B. 402.

<sup>2</sup> 1 N. L. R. B. 335.

<sup>3</sup> See also *Matter of S. L. Allen & Company, Incorporated, and Federal Labor Union Local No. 18526*, 1 N. L. R. B. 714.

<sup>4</sup> 1 N. L. R. B. 359.

<sup>5</sup> See also *Matter of Edward E. Cox, Printer, Inc., and International Printing Pressmen and Assistants' Union, Local No. 376*, 1 N. L. R. B. 594.

<sup>6</sup> 1 N. L. R. B. 546.

employer to accede to demands of the employees. However, before the obligation to bargain collectively is fulfilled, a forthright, candid effort must be made by the employer to reach a settlement of the dispute with his employees. Every avenue and possibility of negotiation must be exhausted before it should be admitted that an irreconcilable difference creating an impasse has been reached. Of course no general rule as to the process of collective bargaining can be made to apply to all cases. The process required varies with the circumstances in each case. But the effort at collective bargaining must be real and not merely apparent (p. 546).

On the other hand, it is not requisite to collective bargaining that an agreement should actually be achieved. In *Matter of Jeffery-DeWitt Insulator Company and Local No. 455, United Brick and Clay Workers of America*,<sup>1</sup> the Board, in finding that there was a refusal to bargain collectively on and after July 16, 1935, nevertheless stated that—

the respondent did engage in collective bargaining with Local No. 455 on and prior to June 20, 1935, even though no agreement had been reached by the parties. Despite the fact \* \* \* that the respondent's good faith in some of its earlier dealings with Local No. 455 is questionable, the fact that the respondent offered to enter into an agreement with Local No. 455 on June 1, accepting some of its demands, and met frequently with Local No. 455 in the period from June 1 to 20, 1935, to discuss the proposals and counter-proposals, leads us to believe that the bargaining by the respondent at that time was done in good faith. It is undoubtedly true that an impasse had been reached by the parties on June 20, 1935, on the three substantive issues of seniority, union shop and check-off, Local No. 455 being unyielding in its demands concerning these issues, the respondent equally firm in its refusal to recede from its position. As long as this impasse continued the respondent might have been justified in refusing to meet with the committee on the basis that no agreement was possible (p. 624).

The manner and extent of negotiations necessary to constitute collective bargaining may vary from case to case. In *Matter of M. H. Birge & Sons Company and United Wall Paper Crafts of North America*,<sup>2</sup> the Board stated that—

The question of whether an employer has failed in his affirmative duty to bargain collectively with the representatives of his employees has meaning only when considered in connection with the facts of a particular case. The history of the relationships between the particular employer and its employees, the practice of the industry, the circumstances of the immediate issue between the employer and its employees are all relevant factors that must be given weight. Consequently, a proper evaluation of the respondent's conduct requires a consideration of the labor relations background of the industry and the actions of the other union manufacturers in the period under examination (p. 739). \* \* \* The respondent's refusal to meet with the union on September 17 was a definite break with the method of conducting labor relations that for long had been firmly established in the industry, and which the respondent itself had consistently pursued over a long period of years. When considered in relation to that method, the refusal and the events preceding the definite step constitute a refusal to bargain collectively within the meaning of section 8, subdivision (5) of the act (pp. 743-4).

(b) *The requirement of good faith.*—The Board has repeatedly asserted that good faith on the part of the employer is an essential ingredient of collective bargaining. In *Matter of Bell Oil and Gas Company and Local Union 258 of the International Association of Oil Field, Gas Well, and Refinery Workers of America, et al.*,<sup>3</sup> the Board stated that—

The obligation to bargain collectively requires considerably more of an employer than merely meeting with the representatives of his employees and then

<sup>1</sup> 1 N. L. R. B. 618.

<sup>2</sup> 1 N. L. R. B. 731.

<sup>3</sup> 1 N. L. R. B. 562.



challenging the composition of their unit or employing other dilatory tactics to thwart their efforts to reach an agreement with him (p. 584).

Other criteria of good faith were discussed in *Matter of Edward E. Cox, Printer, Inc., and International Printing Pressmen and Assistants' Union, Local No. 376*,<sup>1</sup> where the Board held that the respondent did not fulfill its obligations by—

listening to a committee member read the proposed agreement and then turning the proposals down in their entirety without submitting counter-proposals or entering into an honest and sincere discussion of the proposals (p. 600).

In *Matter of S. L. Allen & Company, Incorporated, and Federal Labor Union Local No. 18526*,<sup>2</sup> the Board enunciated the principle that—

To meet with the representatives of his employees, however frequently, does not necessarily fulfill an employer's obligations. \* \* \* A construction of the collective bargaining provision which overlooked the requirement that a bona fide attempt to come to terms must be made, would substitute for non-recognition of the employees' representatives the incentive simply to hamstring the union with endless and profitless "negotiations." In the absence of an attempt to bargain in good faith on the employer's part, it is obvious that such "negotiations" can do nothing to prevent resort to industrial warfare where a dispute of this nature arises (p. 727).

In *Matter of M. H. Birge & Sons Company*,<sup>3</sup> the Board found that the employer exhibited its bad faith by deliberately misrepresenting conditions concerning which the negotiations were held. The Board stated:

Such distortion of the situation obviously transcends the exaggerations that often accompany negotiations in this field; it reveals a determination to thwart the process of collective bargaining, to render it wholly ineffective (p. 744).

In *Matter of Pioneer Pearl Button Company and Button Workers' Union, Federal Local 20026*,<sup>4</sup> the Board said that the assertions of the respondent that its financial condition was poor, when it refused either to prove its statement or to permit independent verification, was insufficient to relieve it of the obligation to bargain collectively.<sup>5</sup>

(c) *Collective bargaining distinguished from adjustment of individual grievances.*—Where a majority of the employees in an appropriate unit have designated or selected representatives for the purposes of collective bargaining, the duty of the employer under the act remains undischarged by the mere adjusting of individual grievances.

In *Matter of Atlantic Refining Company*,<sup>6</sup> the Board stated:

That all individual complaints as to working conditions have at all times been satisfactorily settled does not constitute a proper discharge of the respondent's obligations under section 8, subdivision (5) of the act, and cannot be said to preclude the employees from engaging in an effort to bargain concertedly with their employer on matters of wages, hours, and basic working conditions<sup>7</sup> (p. 368).

<sup>1</sup> 1 N. L. R. B. 594.

<sup>2</sup> 1 N. L. R. B. 714.

<sup>3</sup> 1 N. L. R. B. 731.

<sup>4</sup> 1 N. L. R. B. 837.

<sup>5</sup> See also *Matter of Atlas Bag and Burlap Company, Inc., and Milton Rosenberg, organizers, Burlap & Cotton Bag Workers Local Union No. 2469, affiliated with United Textile Workers Union*, 1 N. L. R. B. 292; *Matter of Harbor Boatbuilding Co. and Ship Carpenters Local Union No. 1835*, 1 N. L. R. B. 349.

<sup>6</sup> 1 N. L. R. B. 359.

<sup>7</sup> See also *Matter of Pennsylvania Greyhound Lines, Inc., Greyhound Management Company, and Local Division No. 1063 of The Amalgamated Association of Street Electric Railway and Motor Coach Employees of America*, 1 N. L. R. B. 1.

In *Matter of International Filter Company and International Association of Machinists, District No. 8*,<sup>1</sup> the Board said that—

The presence or absence of "problems" or "grievances" on the part of employees has nothing to do with their right, under the act, to self-organization and collective bargaining through representatives of their own choosing (p. 498).

(d) *Bargaining with individual employees.*—The attempt on the part of an employer to avoid collective bargaining through bargaining individually with his employees constitutes a violation of the act. In *Matter of Columbian Enameling & Stamping Co. and Enameling & Stamping Mill Employees Union No. 19694*,<sup>2</sup> the Board found that though the respondent—

was now in contact with its employees' representatives, though negotiations had been initiated looking to the settlement of the strike, the respondent continued to solicit individual employees to return to work and at the same time refused to engage in the negotiations. Thus, the employees had no channel through which to arrange their return to work as an organized group, conformably to the decision of that group. By its tactics, the respondent emasculated the union as an effective instrument of employee representation. We hold that by so doing it has engaged in unfair labor practices within the meaning of section 8, subdivisions (1) and (5) of the Act<sup>3</sup> (p. 198).

Again, in *Matter of Atlas Bag and Burlap Company, Inc., and Milton Rosenberg, Organizer, Burlap & Cotton Bag Workers Local Union No. 2469 Affiliated with United Textile Workers Union*,<sup>4</sup> the obtaining by an employer of individual contracts of employment with employees in place of bargaining with the designated representatives of the majority was held to constitute an unfair labor practice under the act.

### 3. THE MAJORITY RULE

(a) *Exclusive representation.*—In accordance with section 9 (a) of the act, the Board has ruled that it is an unfair labor practice for an employer to refuse to bargain collectively and exclusively with representatives selected by the majority of the employees in an appropriate unit.<sup>5</sup> In *Matter of Atlantic Refining Company*,<sup>6</sup> the contention of the employer that the designated representatives of a majority of the employees had no right to bargain for all the employees of the plant and the consequent refusal to negotiate with the representatives were held to constitute a violation of the act.<sup>7</sup>

An employer cannot enter into negotiations with any group purporting to bargain for all the employees, in preference to the actual representatives designated or selected for such purposes by a majority of the employees. In *Matter of The Sands Manufacturing Com-*

<sup>1</sup> 1 N. L. R. B. 489.

<sup>2</sup> 1 N. L. R. B. 181.

<sup>3</sup> See *Matter of The Timken Silent Automatic Company*, 1 N. L. R. B. 335; *Matter of Jeffery-DeWitt Insulator Company*, 1 N. L. R. B. 618; *Matter of Rollway Bearing Company, Inc., and Federal Labor Union 18482*, 1 N. L. R. B. 651.

<sup>4</sup> 1 N. L. R. B. 292.

<sup>5</sup> The question of what is a unit appropriate for the purpose of collective bargaining is discussed on p. 89.

<sup>6</sup> 1 N. L. R. B. 359.

<sup>7</sup> Other decisions dealing with the failure or refusal of an employer to bargain with the designated or selected representatives of a majority of the employees are as follows: *Matter of Columbian Enameling & Stamping Co.*, 1 N. L. R. B. 181; *Matter of Atlas Bag and Burlap Company, Inc.*, 1 N. L. R. B. 292; *Matter of The Timken Silent Automatic Company*, 1 N. L. R. B. 335; *Matter of The Canton Enameling & Stamping Company*, 1 N. L. R. B. 402; *Matter of International Filter Company*, 1 N. L. R. B. 489.

pany,<sup>1</sup> the employer shut down its factory in consequence of a dispute with the union representing a majority of the employees and later reopened the factory after successful negotiations with a union which did not so represent a majority. The Board held that the employer was unjustified in altering the status quo without bargaining with the prior union as the exclusive representative of the employees.

In addition to the right initially to designate or select representatives for the purposes of collective bargaining, the employees in an appropriate bargaining unit may exercise discretion in the matter of changing their representatives at any time. In *Matter of New England Transportation Company and International Association of Machinists*,<sup>2</sup> the Board asserted the principle that—

The whole process of collective bargaining and unrestricted choice of representatives assumes the freedom of the employees to change their representatives \* \* \* (p. 138).

This was held to be so in spite of alleged existing agreements in force between the employer and some of its employees.

(b) *Determination of majority*.—In cases involving collective bargaining, where it is alleged that the labor organization represents a majority of the employees in an appropriate unit, it is necessary to determine the truth of the allegation. In the absence of satisfactory proof, the employees may petition the Board for an investigation and certification of representatives under the provisions of section 9 (c) of the act.<sup>3</sup> This procedure is not necessary, however, where the employees or their representatives can produce satisfactory evidence of a majority. The nature and amount of evidence which the Board will require will of necessity depend upon the situation in each case.

In *Matter of Delaware-New Jersey Ferry Co. and Marine Engineers' Beneficial Association, No. 13*,<sup>4</sup> the respondent's answer questioned the authority of the union to represent the employees. At the hearing the union introduced in evidence cards signed by 11 of the 12 employees in the appropriate unit authorizing the union to represent them in collective bargaining with the respondent. There was also uncontroverted evidence that all 12 of the employees were members in good standing of the union. The Board accepted this evidence as sufficient proof.<sup>5</sup> In *Matter of Atlas Bag & Burlap Co., Inc.*<sup>6</sup> the union proved that it represented a majority of the employees by placing in evidence membership applications signed by 13 of the 18 employees in the appropriate unit, together with testimony that membership in the union included representation through the union for the purposes of collective bargaining.<sup>7</sup>

In *Matter of Harbor Boatbuilding Co. and Ship Carpenters Local Union, No. 1335*,<sup>8</sup> the respondent filed no answer to the allegation of the complaint that a majority of the employees had designated the union as their representative for purposes of collective bargaining. At the hearing the union introduced uncontroverted testimony to the

<sup>1</sup> 1 N. L. R. B. 546.

<sup>2</sup> 1 N. L. R. B. 130.

<sup>3</sup> This section is treated on p. 25, et seq.

<sup>4</sup> 1 N. L. R. B. 85.

<sup>5</sup> See also *Matter of International Filter Company*, 1 N. L. R. B. 489.

<sup>6</sup> 1 N. L. R. B. 292.

<sup>7</sup> Similarly, a membership list was introduced in evidence by the union in *Matter of Jeffery-DeWitt Insulator Company*, 1 N. L. R. B. 618.

<sup>8</sup> 1 N. L. R. B. 349.

effect that all of the employees in the appropriate unit were members of the union and had designated a union committee to represent them in collective bargaining. At a later date, after the issuance of the report of the trial examiner, the respondent, in its exceptions, stated for the first time that the union did not and never had represented a majority of the employees. The Board stated:

A bare denial of a state of fact raised at this belated point in the proceedings, unmentioned in any answer to the allegations in the complaint, unsupported by evidence introduced by respondent or adduced by cross-examination of the union's witnesses, when respondent had full opportunity to raise the issue on any or all of these occasions, is insufficient to undermine the conviction carried by the uncontradicted testimony of the union's witnesses (p. 353).

In *Matter of Atlantic Refining Company*<sup>1</sup> the evidence offered by the union consisted of two petitions circulated among the employees and signed by a majority of them, designating the locals of the union as representatives for the purposes of collective bargaining. This evidence was uncontested by the respondent, and was relied upon by the board.<sup>2</sup>

In *Matter of Rabhor Company, Inc., and International Ladies' Garment Workers' Union*,<sup>3</sup> the Board, in considering the question of majority representation, found that 219 persons had been out on strike, and—

had personally signed a strikers' roll at union headquarters and were receiving strike benefits from the union. This was more than half of the 350 workers in the plant. These figures are based on the number receiving strike benefits and, as such, are well authenticated and exactly determined. We have in the record the strike benefit pay roll for the week ending October 2, contemporaneously compiled, showing the name of each person, and, opposite his name, the signature of the person. By accepting and signing for a strike benefit, the signer asserted his position as a striker making common cause with other strikers (pp. 475-6).

In finding further that the union was the designated agent for collective bargaining, the Board stated:

The leadership of a strike is necessarily entrusted with the functions of collective bargaining during the strike. It has formulated the demands and called the strike to win them. It has constantly before it the problem of finding ways and means to achieve the objectives, and among the means one of the most important and most usual is collective bargaining<sup>4</sup> (p. 476).

In *Matter of Greensboro Lumber Company and Lumber and Sawmill Workers Local Union No. 2688, United Brotherhood of Carpenters and Joiners of America*,<sup>5</sup> where the Board was of the opinion that more exact information would be necessary to determine whether the members of the union constituted a majority of employees in an

<sup>1</sup> 1 N. L. R. B. 359.

<sup>2</sup> The locals had begun proceedings under both sec. 8, subdivision (5), and sec. 9 (c) of the act. The petition in the latter case was dismissed in accordance with the finding that there was majority representation. Other cases in which petitions signed by a majority of the employees were accepted by the Board as satisfactory evidence of the selection of representatives were: *Matter of Canton Enameling & Stamping Company*, 1 N. L. R. B. 402; *Matter of Bell Oil and Gas Company*, 1 N. L. R. B. 562; *Matter of Edward E. Cow, Printer, Inc.*, 1 N. L. R. B. 594 (employees signed proxies).

<sup>3</sup> 1 N. L. R. B. 470.

<sup>4</sup> See also *Matter of the Timken Silent Automatic Company*, 1 N. L. R. B. 335. For other cases in which the Board has found that the union represented a majority of the employees in an appropriate bargaining unit, see *Matter of the Sands Manufacturing Company*, 1 N. L. R. B. 546; *Matter of S. L. Allen and Company, Incorporated*, 1 N. L. R. B. 714; *Matter of M. H. Birge & Sons Company*, 1 N. L. R. B. 731; *Matter of Columbia Radiator Company and International Brotherhood of Foundry Employees, Local No. 79*, 1 N. L. R. B. 847.

<sup>5</sup> 1 N. L. R. B. 629.

appropriate unit, it dismissed the complaint as to the allegation that the respondent refused to bargain collectively, but stated that—

the Board is anxious to effectuate for these employees their right to bargain collectively and will entertain a petition for an investigation and certification of representatives \* \* \* (p. 636).

#### 4. FULFILLMENT OF THE DUTY TO BARGAIN

The employer is not required to continue to bargain collectively with the representatives of its employees when negotiations already held indicate that to do so would be futile. In *Matter of Jeffery-DeWitt Insulator Company*,<sup>1</sup> the Board stated the principle that after an impasse has been reached in negotiations between the employer and its employees, the employer may be justified in refusing to meet further with the employees on the basis that no agreement is possible. However, the situation may change, thus creating new cause for further negotiations. For example, in the case cited above, the impasse was dissolved through the occurrence of a strike and the intervention of disinterested third persons, and the Board said that—

if the respondent had been sincerely interested in using the procedure of collective bargaining as a means of promoting industrial peace it would have seized this as a most auspicious time to have met with Local No. 455 (p. 625).

In *Matter of S. L. Allen & Company, Incorporated*,<sup>2</sup> where the alleged deadlock was found in reality to be a refusal to bargain by the employer, the Board went on to state that—

even if respondent had bargained in good faith before and directly after the strike, and an impasse had been reached, nevertheless, the employer may not always attempt to confine the union's subsequent efforts to secure a settlement to written offers which may be rejected or accepted without explanation. Interchange of ideas, communication of facts peculiarly within the knowledge of either party, personal persuasion, and the opportunity to modify demands in accordance with the total situation thus revealed at the conference is of the essence of the bargaining process. Where in the course of the strike supervening events, such as the formal discharge of the strikers and the importation of strikebreakers, introduce new issues, the employer must meet with the representatives of its employees in order to realize the full benefits of collective bargaining (p. 728).

In many cases, employers have advanced reasons for their failure to bargain collectively which are untenable. In *Matter of International Filter Company*,<sup>3</sup> the employer sought to evade its duty to bargain collectively with the union as the representative of its employees on the ground that recognition of the union and meeting with the union representatives required entering into a closed-shop agreement. The Board stated:

The respondent's position that meeting with union representatives *ipso facto* draws it into a closed-shop agreement is too specious to merit serious consideration. Our experience has been that the cry of "closed shop" is constantly being raised by employers who seek an excuse to evade their duty to bargain collectively under the act and to obstruct and deny the right of employees to do so. There is not an iota of evidence that the union representatives in this case proposed a closed shop as part of an agreement. The respondent never permitted the chosen representatives of its machinist employees an opportunity to propose anything \* \* \* An unfounded apprehension that em-

<sup>1</sup> 1 N. L. R. B. 618.

<sup>2</sup> 1 N. L. R. B. 714.

<sup>3</sup> 1 N. L. R. B. 489.

ployees may demand a closed shop is no excuse for a flat refusal to bargain collectively (p. 499).

In *Matter of Columbian Enameling & Stamping Company*,<sup>1</sup> where the union representatives were in fact seeking a closed shop, the Board stated that this fact alone did not preclude the necessity of collective bargaining, and that—

The specific question to be asked is whether \* \* \* the respondent was justified in believing that further negotiation would be fruitless and settlement of the strike beyond reasonable probability (p. 196).

Another example of an employer whose stated reason for refusing to bargain collectively was deemed inadequate is found in *Matter of Harbor Boatbuilding Co.*,<sup>2</sup> wherein the Board stated that—

It is clear that an employer cannot refuse to bargain collectively on the ground that his competitors have not entered into negotiations or made agreements with their employees (p. 335).

Again, in *Matter of Rabhor Company, Inc.*,<sup>3</sup> where the employer sought to excuse its refusal to meet with the union as the representative of its employees on the ground that the union brought the workers out on strike by false statements and promises, and induced strikers to engage in acts of violence, the Board found the argument to be irrelevant, and said:

Where groups are to be organized and moved into action it is not unusual for the leaders to promise more than can be secured or to indulge in some exaggeration. Indeed, it is one of the functions of collective bargaining to eliminate the misunderstandings that are bound to arise in these struggles and to resolve demands into what can be achieved. The act does not give to us the mandate to examine the speeches and the conduct of those whom the employees choose to follow, and to determine whether, in our opinion, they are worthy to lead. That is for the workers alone to decide (pp. 477-8).

In regard to the alleged violence, the Board stated further:

In any case the fact that during a strike, necessarily a time of heated emotions, the bounds of permissible conduct may have been overstepped by men or leaders cannot be used to deny to employees their full right of representation (p. 478).

In *Matter of Columbia Radiator Company*,<sup>4</sup> the employees, dissatisfied with the shop representation plan in the employer's plant, became members of an outside union and designated the members of the former shop representation committee as their representatives on the union committee for the purposes of collective bargaining. The employer, having refused to bargain with the members of the committee, sought to justify its action on the ground that—

it had no knowledge that the committee was acting as a union committee selected by the union members, but believed it was dealing with the shop committee elected by all of its employees (p. 852).

The Board stated:

we feel that reliance on this fact, by the respondent, indicates a confusion as to the issues involved. If the respondent failed to bargain collectively with the representatives selected by a majority of its employees, it committed an unfair labor practice, whether those representatives were a committee chosen by Local No. 79 or a committee elected under the shop representation plan (p. 852).

<sup>1</sup> 1 N. L. R. B. 181.

<sup>2</sup> 1 N. L. R. B. 349.

<sup>3</sup> 1 N. L. R. B. 470.

<sup>4</sup> 1 N. L. R. B. 847.

## 5. DUTY TO BARGAIN WHERE THERE IS A STRIKE

The duty of an employer to bargain collectively with the representatives of his employees is not extinguished by the occurrence of a strike. In *Matter of Columbian Enameling & Stamping Co.*,<sup>1</sup> the Board stated:

The act requires the employer to bargain collectively with its employees. Employees do not cease to be such because they have struck.<sup>2</sup> Collective bargaining is an instrument of industrial peace. The need for its use is as imperative during a strike as before a strike. By means of it, a settlement of the strike may be secured<sup>3</sup> (p. 197).

This duty of the employer exists unless "further negotiation would be fruitless and settlement of the strike beyond reasonable probability" (p. 196).

Even where such an impasse exists, the situation may so change as to require further collective bargaining by the employer.<sup>4</sup> Where no impasse exists, the fact that the employees call a strike pending the negotiations in order to reinforce their demands does not terminate the obligation of the employer to negotiate further. In *Matter of M. H. Birge & Sons Company*,<sup>5</sup> where this situation existed, the Board, in finding there had been a refusal to bargain collectively by the employer after the strike had been called, said:

We are not unmindful of the fact that employees who strike must be prepared in many cases to suffer the economic consequences of their action and that the employer is not required by the act to refrain from protecting his economic interests (in this instance through the employment of new employees). But even in regard to such periods in labor relations, Congress, in the National Labor Relations Act has placed restrictions upon the employer's conduct in an endeavor to achieve an equality in bargaining power<sup>6</sup> (p. 731).

The Board stated further:

Had the respondent after September 3 (the strike was called on Sept. 1) sincerely utilized the long-established practice of dealing with the union

<sup>1</sup> 1 N. L. R. B. 181.

<sup>2</sup> Sec. 2, subdivision (3) of the act provides that the term "employee" shall include "any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment." See also *Matter of Jeffery-DeWitt Insulator Company*, 1 N. L. R. B. 618.

<sup>3</sup> In the following decisions the Board has held the employer to have violated the act because of a refusal to bargain collectively with the representatives of its employees during a strike: *Matter of The Timken Silent Automatic Company*, 1 N. L. R. B. 355; *Matter of Rubber Company, Inc.*, 1 N. L. R. B. 470; *Matter of The Sands Manufacturing Company*, 1 N. L. R. B. 546 (temporary shut-down of plant); *Matter of S. L. Allen & Company, Incorporated*, 1 N. L. R. B. 647; *Matter of Columbia Radiator Company*, 1 N. L. R. B. 714.

<sup>4</sup> See *Matter of Jeffery-DeWitt Insulator Company*, 1 N. L. R. B. 618. See also *Matter of S. L. Allen & Co., Incorporated*, 1 N. L. R. B. 714, where there was no impasse. The Board, however, stated that "even if respondent had bargained in good faith before and directly after the strike, and an impasse had been reached, nevertheless, the employer may not always attempt to confine the union's subsequent efforts to secure a settlement to written offers which may be rejected or accepted without explanation. . . . Where in the course of the strike supervening events, such as the formal discharge of the strikers and the importation of strikebreakers, introduce new issues, the employer must meet with the representatives of its employees in order to realize the full benefits of collective bargaining", p. 728.

<sup>5</sup> 1 N. L. R. B. 731.

<sup>6</sup> The Board ordered the reinstatement of the striking employees and the dismissal, if necessary, of the new employees hired after the date of the strike. In a dissent, J. Warren Madden, chairman of the Board, stated, in part: "I think the decision amounts to a holding that an employer whose employees have struck, not as a result of any unfair labor practice on the part of the employer, is legally obliged to close his plant for an indefinite time while he negotiates with the strikers for their return to work. I see no such provision in the statute. If it is successfully read into the statute it will have the effect of inducing unions to call strikes without first taking careful stock as to whether their economic power is sufficient to bring the employer to their terms. Labor unions will gain no permanent advantage from such a doctrine. Employers and the public will properly insist that such a rule is unfair unless it is accompanied by compulsory arbitration" (p. 748). See *Matter of Bell Oil and Gas Company*, 1 N. L. R. B. 562, where a strike interrupted negotiations and prevented further attempts to reach an agreement.

when faced with labor problems that required solution, had it attended the general conference on September 17, or even had it acted in good faith when it met with the union on September 19 and September 23, a solution of the difficulty might have been evolved and the union employees reinstated (p. 731).

#### D. DOMINATION AND INTERFERENCE WITH THE FORMATION OR ADMINISTRATION OF A LABOR ORGANIZATION AND CONTRIBUTION OF FINANCIAL OR OTHER SUPPORT TO IT

Section 8, subdivision (2), of the act declares that it shall be an unfair labor practice for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it."<sup>1</sup> Since section 7 guarantees to employees "the right to self-organization" and "to bargain collectively through representatives of their own choosing", the purpose of section 8, subdivision (2), is obvious—the formation and administration of labor organizations are the employees', and not the employers', concern.

Section 8, subdivision (2), prohibits employer interference in any "labor organization." The term "labor organization" is defined in section 2, subdivision (5), to mean "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." Thus, no matter what form the organization takes—employee representation plan,<sup>2</sup> good will club,<sup>3</sup> friendship association,<sup>4</sup> department councils,<sup>5</sup> shop union,<sup>6</sup> if it exists in part for the purpose of dealing with management concerning the matters thus specified, it is a labor organization within the meaning of the sections involved. It is obvious that the existence of employer control of an organization of the type described in section 2, subdivision (5), does not prevent the organization from being termed a "labor organization" within the meaning of the act. But by calling even such employer-controlled organizations "labor organizations" the act does not mean that they are to be considered genuine organizations of employees on an equal footing with independent labor organizations. The term is used merely as a matter of statutory draftsmanship whose purpose is to bring all employer-controlled organizations

<sup>1</sup> A proviso to this section reads as follows: "Provided, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay."

To date the Board has found it neither necessary nor expedient to issue any rules and regulations on this point; nor has the proviso been in issue in any of the cases considered by the Board under this section.

<sup>2</sup> *Matter of Pennsylvania Greyhound Lines, Inc., and Greyhound Management Company, Corporations, and Local Division No. 1063 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America*, 1 N. L. R. B. 1.

<sup>3</sup> *Matter of Atlanta Woolen Mills and Local No. 2307, United Textile Workers of America*, 1 N. L. R. B. 316.

<sup>4</sup> *Matter of Clinton Cotton Mills and Local No. 2182, United Textile Workers of America*, 1 N. L. R. B. 97.

<sup>5</sup> *Matter of Wheeling Steel Corporation and the Amalgamated Association of Iron, Steel, and Tin Workers of North America, NRA Lodge No. 155, Goodwill Lodge No. 157, Rod and Wire Lodge No. 158, Golden Rule Lodge No. 161, Service Lodge No. 163*, 1 N. L. R. B. 699.

<sup>6</sup> *Matter of Atlas Bag and Burlap Company, Inc., and Milton Rosenberg, Organizer, Burlap & Cotton Bag Workers Local Union No. 2469, Affiliated with United Textile Workers Union*, 1 N. L. R. B. 292.



within the ban of section 8, subdivision (2), no matter what form they may take.<sup>1</sup>

The scope of this section, which in large part is concerned with the result of an employer's activities rather than with the separate activities themselves, can best be gathered by a description of those activities which in the individual cases decided under the section have been held to produce the proscribed result. The first case decided under this section dealt with an organization in existence prior to the effective date of the act but continuing thereafter. In the *Matter of Pennsylvania Greyhound Lines, Inc., and Greyhound Management Company, Corporations, and Local Division No. 1063 of the Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America*,<sup>2</sup> the respondents were wholly responsible for the formation in 1933 of a labor organization, called the Employees Association of the Pennsylvania Greyhound Lines, Inc., among the maintenance employees, clerical employees, and bus drivers of that company. The uncontraverted evidence set forth in full in the Board's decision showed in detail the various steps pursued by a large company when it determines to establish an organization among its employees. A letter from one of the executive officials to the various garage superintendents stated that the "management has decided to set up a plan of employee representatives" but that the plan must first "be requested by the employees." At the instigation of company officials petitions "requesting" the plan were signed by employees and "accepted" by the company, elections of employee representatives were conducted under the guidance of these same officials, preliminary meetings held, bylaws (prepared by the company) adopted, and an organization formed. This organization took the form of joint employee and employer representation on regional committees, presided over by regional managers, which headed up to a joint reviewing committee. These committees were designed primarily, if not solely, to handle individual employee grievances and were not intended to provide an avenue for collective bargaining concerning wages, hours, and basic working conditions. There was no employee organization in the sense of an organic body; all employees were "members" and participated by voting. A handful acted as employee representatives. The value of the association as a method of employee representation was described in the decision in the following words:

The association supposedly exists to provide "adequate representation for employees before the management." The "adequate representation" actually provided is a mockery. The employees are not permitted to utilize the skilled

<sup>1</sup> Thus, in answering an objection by an independent labor organization to the Board's characterization of a rival organization claimed to be employer-controlled as a "labor organization," the Board said:

"Inasmuch as objections have been made to the Board's conclusion that the Good Will Club is a labor organization within the meaning of section 2, subdivision (5), of the act, the Board wishes to take this opportunity of pointing out that such a conclusion is made merely to comply with the technical requirements of the act. \* \* \* In fact, from the legal point of view, the Board has no power to find that an employer has violated that subdivision (sec. 8, subdivision (2)) unless it also finds that his illegal acts were taken with respect to a 'labor organization'; as used in section 8, subdivision (2), the term has the meaning given by section 2, subdivision (5). A review of the decisions thus far made by the Board will demonstrate that by making the essential finding under section 2, subdivision (5), the Board does not intend to place the stamp of legitimacy upon organizations which should be, and which have been, outlawed." *Matter of Atlanta Woolen Mills and Local No. 2307, United Textile Workers of America*, 1 N. L. R. B. 328 at p. 333.

<sup>2</sup> 1 N. L. R. B. 1.

services of men outside the employ of the respondents in negotiation with the management since there has been imposed upon them by the management an organization whereby only employees may be representatives. The employees have no regular or established method of meeting with each other and by discussion and debate to formulate the desires of the whole group and then as a body so to instruct their representatives. Similarly, the representatives have no established method of consulting with the employees whom they represent. The representatives are wholly dependent upon the management for their expenses and financial support: They have been intimidated and discouraged by the hostility of the management toward any real activity on behalf of the employees (p. 14).

While there was no doubt that "historically \* \* \*, the Employees Association was entirely the creature of the management" and that in its functioning it afforded nothing of substance to the employees in the way of genuine collective bargaining, the issue presented in the case was whether the respondents after July 5, 1935, dominated or interfered with the administration of the association or contributed financial or other support to it. The evidence considered in the decision overwhelmingly pointed to such employer activity; this evidence was summarized as follows:

Currently, it is still the creature of the management. All of its affairs are controlled by the management—its elections are arranged, conducted and supervised by the management, the meetings of the regional committees are controlled by the management so as effectively to prevent any genuine and free discussion, the choice of matters to be discussed by the general committee of employee representatives rests with the management through the system of "joint submission"; the organic structure is entirely at the control of the management because of the necessity for its consent to any amendment of the by-laws. The association is completely supported by the management, so that a cessation of its financial and other support would leave the association completely penniless and unable to function. The words domination, interference and support are separately inadequate to describe the management's part in the association. The totality of the management's prescribed organic structure of the association and the management's participation results in complete subjugation and control (p. 14).

Concluding that "the participation of the respondents in the association—their domination, interference, and support—are unfair labor practices proscribed by section 8, subdivision (2)", the Board ordered, in addition to the formal cease and desist order, the withdrawal by the respondents of all recognition from the association as representative of the employees.

The organization established by the respondents in the *Matter of Pennsylvania Greyhound Lines, Inc.*<sup>1</sup> case was rather complex, partly because of the size and nature of the business. *Matter of Clinton Cotton Mills and Local No. 2182, United Textile Workers of America*,<sup>2</sup> involved a simple form of employee organization, both established by the employer and controlled by it through the direct activities of supervisory officials. In December, 1934 two of the supervisory officials of the Clinton Cotton Mills formed the Clinton Friendship Association in order to combat the local of the United Textile Workers of America that was in existence at the mill. Overseers and second hands, part of the supervisory force,<sup>3</sup> prepared the bylaws, presided at the first meeting, constituted some of the first officers, became members, attended later meetings. In addition they

<sup>1</sup> 1 N. L. R. B. 1.

<sup>2</sup> 1 N. L. R. B. 97.

<sup>3</sup> The responsibility of the employer for the activities of its overseers and second hands was discussed by the Board in the following part of the decision:

"In his oral argument before the Board on this phase of the case, counsel for the respondent placed great stress on the fact that the second hands are the leaders of the

systematically and openly solicited the employees to join the association, such solicitation taking place generally during working hours. These activities continued after July 5, 1935, and were reinforced by discriminatory discharges of union members.<sup>1</sup> The activities of the overseers and second hands culminated in a closed shop contract signed between the employer and the association. The enforcement of this contract resulted in the discharge of nearly 100 members of the independent union. The Board characterized this final step in the following words:

As stated above, the participation of the respondent in the association constituted unfair labor practices forbidden by section 8, subdivision (2). In this case the respondent has gone further and established the association as the exclusive representative of all of its employees for the purpose of collective bargaining. While the association may now have as members a majority of the employees, the manner in which such membership was obtained makes it clear that large numbers of its members have never freely chosen the association. From the start the membership was obtained practically entirely by solicitation of overseers and second hands. After July the threat of discharge implicit in such solicitation was made more concrete by the discharge of union members. And in August, by manipulation of its puppet, the respondent stripped the situation of its appearance of voluntary choice and presented its employees with the clean-cut choice of the association or their jobs. The closed-shop contract and the purported "collective bargaining" by the association were the result of concerted action on the part of the attorneys for the respondent and the association, the president of the respondent and the overseers and second hands who controlled the association. The employee members of the association were utterly ignorant of the meaning of collective bargaining and left the entire matter to their officers. Their officers were equally uniformed and so they in turn left everything in the hands of their attorney. On the basis of his own testimony he likewise was not very familiar with the subject, so that the president of the respondent and his attorney are left as the informed actors (p. 111).

As a result of the finding that the employer had dominated and interfered with the administration of the association and had contributed support to it, the Board ordered that all recognition be withdrawn from the association as representative of the employees; that the association be completely disestablished as such representative; and that the closed shop contract be in effect abrogated.

In the decision in *Matter of Clinton Cotton Mills*<sup>2</sup> the Board took occasion to state that the absence of employer control of an organiza-

employees in a mill village. He stated that there was a dividing line between the second hands and the overseers, although it should be noted that both types of supervisory employees participated in the association. Consequently, he argued, the part of the second hands in the formation, development, and conduct of the association was no more than an expression in this field of the general leadership exercised by them in all affairs of the mill village. However, it must be remembered that overseers and second hands are directly responsible to the management for production efficiency, labor costs, quality of work and discipline. Coupled with this responsibility placed upon them as supervisory officials is the delegation to the overseers of the authority to hire and discharge employees and to the second hands of the authority to recommend such action. Thus, on the basis of duties and authority they are a part of management. Moreover, they are that part of management that has the closest and most direct contact with the employees. Under the circumstances of this case, these employees attempting to engage in concerted activities to advance their own interests cannot do so freely under the surveillance and active leadership of management, no matter how friendly the personalities who compose that management may be outside the mill walls. Finally, the leadership of the second hand in the mill village, to which counsel pointed, is simply the consequence of his dominant position in the most important part of a mill village—the mill itself" (pp. 109-10).

<sup>1</sup> The employer at the outset accorded the association the privilege of the check-off. As to this aspect, we said:

"While the check-off is ordinarily a legitimate method of collecting union dues with the assistance of the employer, when it is used as merely one device among many whereby the employer fosters and supports a management-controlled organization, it comes within the ban of sec. 8, subdivisions (1) and (2)" (p. 108).

<sup>2</sup> 1 N. L. R. B. 97.

tion is not conclusively proven by pointing to one act of the organization inimical to the interests of the employer. When the management of the mill had announced a wage reduction, the association had protested to the management with the result that the reduction was not put into effect. In answer to the employer's contention that this incident showed the association to be an organization freely chosen by the employees the Board said:

The fact that the members of a management-controlled association on one occasion assert their own wishes does not remove the stigma of the domination. An organization which is normally entirely under the control of the employer may well get out of hand if a wage reduction is proposed. The association is still dominated by the respondent, and it is that domination which the act declares an unfair labor practice (p. 113).

In *Matter of Pennsylvania Greyhound Lines, Inc.*<sup>1</sup> and *Matter of Clinton Cotton Mills*<sup>2</sup> the employers' conduct was marked by numerous overt acts plainly designed to establish and control the organization of their employees. In *Matter of Wheeling Steel Corporation and the Amalgamated Association of Iron, Steel, and Tin Workers of North America, NRA Lodge No. 155, Goodwill Lodge No. 157, Rod and Wire Lodge No. 158, Golden Rule Lodge No. 161, Service Lodge No. 163*,<sup>3</sup> the acts of the employer, while as effective, were not so open nor was their purpose so unconcealed. In 1934 department councils were organized in each of the departments of the Portsmouth plant of the Wheeling Steel Corporation through the steps of petition by employees, acceptance by management, adoption of constitution and bylaws of the councils, establishment of a board of directors of the council to handle grievances. On paper the councils were independent of the employer. But the company had been instrumental in the circulation of the petition, had explained its purpose, had constructed voting booths, had mimeographed the constitution and bylaws after approving them, had permitted elections to be conducted in its offices. Company officials attended meetings of the councils, expressed a preference for the councils, and informed members that they would be given advantages in work and working conditions. After the formation of these councils, the company continued to care for and foster them. It assisted in maintaining a meeting hall, it permitted them the use of the bulletin boards, although denying such use to the lodges of the Amalgamated Association of Iron, Steel, and Tin Workers of North America, the independent labor organization, its foremen brought pressure on the employees to join the councils and attended their meetings, its officials appeared at meetings and praised the councils. It suggested a general council of delegates from the various department councils, and its suggestion was adopted. To this it paid yearly, pursuant to the bylaws of the general council, 50 cents for every employee in the plant eligible to vote, whether he belonged to one of the councils, one of the amalgamated lodges, or no labor organization at all. A monthly sum of \$10 was paid to each delegate in the general council. The company also paid for the

<sup>1</sup> 1 N. L. R. B. 1.

<sup>2</sup> 1 N. L. R. B. 97.

<sup>3</sup> 1 N. L. R. B. 699.

services of an attorney for the general council. From these activities, the Board concluded as follows:

We are convinced that the respondent initiated the formation of the department councils and the general council, and that by means of financial support, by favoritism, and subtle devices of coercion is sustaining the life of those organizations. It is true that in form they are independent and that the employees may on their own initiative espouse and join such organizations. But from the beginning employee initiative with respect to the organization and perpetuation of the councils—even assuming any existed—has been determined by fear of the respondent. The power of an employer over the economic life of an employee is felt intensely and directly; and in the case of a company, which, like the Wheeling Steel Corporation, has a great number of plants—some idle, some running below capacity—this power is enormously increased. The employee is sensitive to each subtle expression of hostility upon the part of one whose good will is so vital to him, whose power is so unlimited, whose action is so beyond appeal. Prior to the organization of the councils, the respondent had emphatically declared its antagonism to the Amalgamated. Subsequently, it had let it be understood that the continued operation of the plant depended upon the inauguration of acceptable labor organizations, which it itself started and in considerable measure supported by money and by favoritism. As a result, the councils in the minds of the employees are indissolubly linked with the respondent's will and desire (pp. 709-10).

As a consequence of its domination and interference and its contribution of financial and other support, the respondent was ordered to withdraw recognition from the councils as organizations for the purpose of collective bargaining upon behalf of its employees.<sup>1</sup>

In all of the cases above considered the employer had directly taken an active part in the formation and control of the labor organization. But the Board has recognized that an employer may, by suggestion and indirection, lead others to bring into being an organization which is subservient, or even favorable, to his wishes, and that such conduct on the part of an employer is likewise prohibited by section 8, subdivision (2). Such a situation was considered in *Matter of Ansin Shoe Manufacturing Company and Shoe Workers' Protective Union, Local No. 80*.<sup>2</sup> After a series of forceful requests by a local of the Shoe Workers' Protective Union, an independent union in existence at the plant, the company announced that it was going to move its factory from the town of Athol. Immediately a citizens' committee of prominent citizens in that town was formed with a Reverend Barker as chairman. This committee held various meetings of employees and succeeded in forming the "Progressive Shoe Workers' Union", restricted to employees in the plant. The company at once entered into a "union shop" agreement with this organization. The legality of the entire proceeding was considered by the Board in the following portion of the decision:

The charge against respondent is that it dominated and interfered with the formation and dominates and interferes with the administration of the progressive union and contributes financial and other support to it. Sidney Ansin (treasurer and general manager of the respondent), testifying at the hearing,

<sup>1</sup> In *Matter of Oregon Worsted Company, a Corporation, and United Textile Workers of America, Local 2435*, 1 N. L. R. B. 915, the Board was concerned with a case in which the employer, after openly forming a labor organization among his employees and recognizing it as representative of the employees in an "agreement" with it, had after July 5, 1936, been able to sustain its existence by means of extending to it special favors explicitly denied to an independent union in existence at the plant and by discriminatory conduct, including discharge, toward members of that union. Such favors consisted of use of company bulletin boards, permission to collect dues and discuss organization matters during working hours, etc. The employer was ordered to withdraw recognition from the organization he had established.

<sup>2</sup> 1 N. L. R. B. 929.

sought consistently to give the impression that respondent was purely passive in all the events described above; it did not call the meetings, write the by-laws, or propose the form of the new organization. It did not, in other words, actively take a part in initiating or forming the specific organization here attacked.

We do not so narrowly interpret section 8, subdivision (2), of the act, as to require this direct and immediate link between the employer and the outlawed organization. This section does not stand alone; its meaning is derived not solely from its words but from related sections and from the purposes of the act. This section makes specific one of the ways in which an employer can interfere with the broad right of the employees under section 7 to bargain collectively through representatives of "their own choosing", and is to be construed so as to further the intention of section 7. Its object is to protect the rights of employees from being hamstrung by an organization which has grown up in response to the will and the purposes of the employer, an organization which would not be, in the sense of section 7, an organization of the employees' choice. The workers may be aware of their employer's antipathy to union organization and seek to propitiate him by acceptable conduct. This may be unavoidable. But the employer can be prevented from engaging in overt activity calculated to produce that result. If labor organizations are to be truly representative of the employees' interest, as was the intention of Congress as embodied in this act, the words "dominate and interfere with the formation of any labor organization" must be broadly interpreted to cover any conduct upon the part of an employer which is intended to bring into being, even indirectly, some organization which he considers favorable to his interests.

Of such conduct by respondent the record is full. When the president of the international announced, as Sidney Ansin says, that the union would seek a closed shop, respondent countered with a threat to leave town. It is quite possible that Ansin did not arrange the intervention of the citizens' committee; that may have been quite unnecessary. Ansin had laid down an ultimatum: if we are to stay here, see to it that our labor relations are satisfactory. Thus advised of their danger, the employees and even more the business interests of the community, whose primary interest was to keep the factories in town on any terms, might well be expected to seek an acceptable solution. But Ansin's intervention did not stop at this point. He participated in the meetings between the committee and his employees; meetings which were in essence labor organization meetings. His alleged role at these meetings was that merely of negotiator of the labor contract. This position is disingenuous. Though Ansin may have made very few suggestions as to the form which the organization was to take, his positive insistence that the business agent of the new organization be a resident of Athol revealed his demand that the new organization must not be a national organization; and the committee's statement to McAdams that Carey, the outside organizer, must not be on the union delegation showed at the very least that the committee comprehended Ansin's views and that the whole problem of these meetings was to find a labor organization acceptable to Ansin. Ansin's vague offer of \$1,000 for hospitalization, which in the speech of the Reverend Barker to the mass meeting became an offer of funds to the new union—an offer which up to the time of the hearing had never been fulfilled in any form—was both a further pressure, and an attempt to give all of this pressure a benevolent aspect.

The "lay-off" of McAdams and Ferris (two employees and members of the independent union) after they had thwarted the organization of the combined Ansin-Anwelt workers was a pointed reminder of what the employees were expected to do. Thereupon 75 out of 500 Ansin workers formed, under the Reverend Barker's auspices, the new union. With this newly formed organization, Ansin signed an agreement embodying the "union shop", an arrangement almost as drastic as the "closed shop", the suggestion of which by Nolan (president of the Shoe Workers' Protective Union) had caused Ansin to announce that the companies would leave Athol.

Thus has Ansin's original ultimatum borne fruit. Cautiously and discreetly reinforced from time to time by a suggestion, a show of power easily understood—yet combined always with the forms of aloofness and disinterestedness—it has brought forth a union restricted in membership to respondent's employees, and by the "union shop" clause, has ousted the old union and its membership from the plant. This outcome does not flow from that free choice which our act is designed to foster and protect. It is the result of fear deliberately pro-

voked and a sufficient suggestion as to how the displeasure might be appeased. We find that respondent has dominated and interfered with the formation of the Progressive Shoe Workers' Union (pp. 935-7).<sup>1</sup>

An employer's activities designed to form a "labor organization" are within the ban of section 8, subdivision (2) even though he is unsuccessful and no "labor organization" is in fact formed. In *Matter of Canvas Glove Manufacturing Works, Inc., and International Glove Makers Union, Local No. 88*,<sup>2</sup> the employer had urged the employees "to sign up in what was called a company union", promising them reduced dues, parties, sick benefits, and increased work rates. The employer desired in this fashion to combat an independent union in existence at the plant. However, these activities were unavailing and no labor organization was brought into being. Characterizing the evidence as showing that "the respondent did make a determined effort to initiate a labor organization and to dominate and interfere with its formation", the Board held:

In our opinion, section 8, subdivision (2) of the act forbids domination or interference not only where it is successful, and a labor organization is actually formed, but also makes it an unfair labor practice where the domination or interference is unsuccessful. In this case, the respondent was unsuccessful because of the firmness of its employees. Since the act is remedial, it is appropriate to require the respondent to cease and desist from unfair labor practices which may, at some future time, be more successful.

We find that the respondent dominated and interfered with the formation of a labor organization \* \* \* (pp. 526-7).<sup>3</sup>

In two cases under this section the Board has held that the evidence was insufficient to warrant the Board in finding a violation. In the first, *Matter of Mackay Radio & Telegraph Company, a corporation, and American Radio Telegraphists' Association, San Francisco Local, No. 3*,<sup>4</sup> while no labor organization was in fact formed, several employees had attempted to establish a "relations committee" to represent the employees instead of the independent union already in existence. After a review of the evidence from which the Board concluded that the record might not contain a complete account of

<sup>1</sup> See also the companion case, *Matter of Anwell Shoe Manufacturing Company and Shoe Workers' Protective Union, Local No. 80*, 1 N. L. R. B. 939.

*Matter of Atlas Bag & Burlap Company, Inc., and Milton Rosenberg, organizer, Burlap and Cotton Bag Workers Local Union No. 2469, affiliated with United Textile Workers Union*, 1 N. L. R. B. 292, presented a similar, though cruder form of employer participation in the formation of an organization of employees. In that case the employer secured from the industrial secretary of a Chamber of Commerce "forms" for the establishment and organization of a "shop union" which it then turned over to one of its employees. This employee, with several others, formed a "shop union" in accordance with these forms and with the aid and encouragement of some of the foremen. The employer then "recognized" the "shop union" and its "collective bargaining committee." In finding that the employer had dominated and interfered with the formation and administration of a labor organization, the Board said:

"The right of employees to be free from such domination and interference, guaranteed to them by the National Labor Relations Act, and the correlative duty imposed upon the employer not to dominate or interfere, cannot be evaded by the obvious and transparent subterfuge of ready-made 'shop union' plans furnished to employers by the industrial secretary of a chamber of commerce, an association of employers. The evidence clearly establishes the fact that the respondent participated not only in securing the 'shop union' plan from Balleisen (the industrial secretary), but also took an active part in 'putting it over'. The respondent's officers and foreman solicited signatures to the letter dated October 23 (announcing the organization of the 'shop union'), furnished the services of its stenographer, and the use of its office, participated or were present at the 'election' on October 25 (of officers of the 'shop union'). The parts played by M. Mignone (the employee mentioned above) and his associates in perfecting the 'shop union' and the 'collective bargaining committee' were obviously directed by the respondent in accordance with the scenario furnished by Balleisen" (pp. 302-3).

<sup>2</sup> 1 N. L. R. B. 519.

<sup>3</sup> See also *Matter of Mackay Radio Telegraph Company, a Corporation, and American Radio Telegraphists' Association, San Francisco Local No. 3*, 1 N. L. R. B. 201, in which the Board said that "an abortive attempt by an employer to form a labor organization is an unfair labor practice within the meaning of that section (sec. 8, subdivision (2))" (p. 231).

<sup>4</sup> 1 N. L. R. B. 201.

the motives of these employees, the Board dismissed the complaint insofar as it concerned a charge under this section, since the evidence in the record did not show that the employer had been involved in the activities of these employees. In the second case, *Matter of Atlanta Woolen Mills and Local No. 2307, United Textile Workers of America*,<sup>1</sup> after reviewing evidence to the effect that the employer had encouraged membership in a "Good Will Club" formed early in 1935, through such devices as use of bulletin boards for a notice by the club declaring a closed shop and solicitation by foremen, the Board held that the evidence was not sufficient to warrant a finding that the employer dominated or interfered with its administration, although such acts were deemed a violation of section 8, subdivision (1). However, on a petition for rehearing by the local of the United Textile Workers in existence at the plant, the Board indicated that in the future on a similar state of facts it might reach a different conclusion with respect to section 8, subdivision (2).<sup>2</sup> In addition, on the basis of the violation of subdivision (1), the Board ordered that the employer withdraw all recognition from the Good Will Club as representative of its employees since the acts of the employer had enabled it to achieve its large membership.

In all of the cases considered by the Board under this section, an independent union was in existence at the time the organization claimed to be formed or controlled by the employer was established or functioning. A comparison of the employer's attitude in these cases toward the two organizations and their members is revealing. Members of the independent union are discharged or laid off in a discriminatory fashion,<sup>3</sup> "agreements" are readily signed with the employer-controlled organization, whereas all efforts of the independent union to bargain collectively are frustrated,<sup>4</sup> privileges, such as the check-off,<sup>5</sup> use of company bulletin boards,<sup>6</sup> solicitation of employees on company time and property,<sup>7</sup> are accorded to the employer-controlled organization and denied to the independent union. In a realistic world the presence of such differences in treatment serves only to emphasize the employer's control. In addition, these differences indicate that the primary, if not sole purpose of the employer-controlled organization is to weaken and eventually destroy the independent union.

## SECTION E. INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES

Section 9 (c) of the act provides that—

Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the

<sup>1</sup> 1 N. L. R. B. 316.

<sup>2</sup> *Matter of Atlanta Woolen Mills*, 1 N. L. R. B. 316.

<sup>3</sup> *Matter of Pennsylvania Greyhound Lines, Inc.*, 1 N. L. R. B. 1; *Matter of Clinton Cotton Mills*, 1 N. L. R. B. 97; *Matter of Oregon Worsted Company*, 1 N. L. R. B. 915; *Matter of Canvas Glove Manufacturing Works, Inc.*, 1 N. L. R. B. 519; *Matter of Ansin Shoe Manufacturing Company*, 1 N. L. R. B. 929; *Matter of Wheeling Steel Corporation*, 1 N. L. R. B. 699; cf. *Matter of Atlanta Woolen Mills*, 1 N. L. R. B. 316.

<sup>4</sup> *Matter of Atlas Bag & Burlap Company, Inc.*, 1 N. L. R. B. 292; *Matter of Clinton Cotton Mills*, 1 N. L. R. B. 971; *Matter of Oregon Worsted Company*, 1 N. L. R. B. 915; cf. *Matter of Ansin Shoe Manufacturing Company*, 1 N. L. R. B. 929.

<sup>5</sup> *Matter of Clinton Cotton Mills*, 1 N. L. R. B. 97.

<sup>6</sup> *Matter of Oregon Worsted Co.*, 1 N. L. R. B. 915; *Matter of Wheeling Steel Corporation*, 1 N. L. R. B. 699; cf. *Matter of Atlanta Woolen Mills*, 1 N. L. R. B. 316.

<sup>7</sup> *Matter of Clinton Cotton Mills*, 1 N. L. R. B. 91; *Matter of Oregon Worsted Company*, 1 N. L. R. B. 915.



parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain (sic) such representatives.

By virtue of section 9 (a) of the act, representatives designated or selected for the purposes of collective bargaining by a majority of the employees in a unit appropriate for such purposes, are the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. For an employer to refuse to bargain collectively with such representatives is, by virtue of section 8, subdivision (5), an unfair labor practice which the Board is empowered to prevent. Whether or not a majority of the employees in an appropriate unit desire the same organization to represent them is a fact which must be determined before it can be found that an employer has committed an unfair labor practice in refusing to bargain collectively. The purpose of section 9 (c) is to give the Board the necessary investigatory power to determine this fact.

The problem of whether a question concerning representation is a question "affecting commerce" is jurisdictional, and is discussed elsewhere in this report.<sup>1</sup>

Under section 9 (b) of the act the Board is empowered to—

\* \* \* decide in each case whether, \* \* \* the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

This power is exercised by the Board in cases arising under section 8, subdivision (5), of the act, as well as in cases arising under section 9 (c). Consequently, the principles enunciated by the Board under section 9 (b) are discussed in a separate section.<sup>2</sup>

#### 1. CERTIFICATION WITH OF WITHOUT ELECTION

It should be noted that section 9 (c) empowers the Board to certify representatives with or without elections. If a labor organization, without an election, can present adequate proof that it represents a majority of the employees in an appropriate unit, it may, if the circumstances are otherwise appropriate, proceed under section 8, subdivision (5) of the act.<sup>3</sup> It may also petition for certification under section 9 (c) before it attempts to bargain with the employer. If the labor organization is unable to prove in such a proceeding that it represents a majority of the employees, the Board may then direct an election. Thus in *Matter of John Blood & Company, Inc., a corporation, and American Federation of Hosiery Workers, Branch No. 69*,<sup>4</sup> the Board certified on the basis of a petition signed by a majority of the eligibles just prior to the filing of the petition for an investigation under section 9 (c). This signed petition was introduced

<sup>1</sup> See sec. A of ch. XIII: "Jurisdiction."

<sup>2</sup> See sec. F of this chapter: "The unit appropriate for the purposes of collective bargaining."

<sup>3</sup> For a discussion of such cases, see sec. C of this chapter, supra: "Collective Bargaining."

<sup>4</sup> 1 N. L. R. B. 371.

in evidence at the hearing by the persons who solicited the signatures, and—

Each of these persons testified that the petition offered in evidence was the original petition and as to which signatures he had secured, that the petition was voluntarily signed in his presence and without coercion, and that each person who signed the petition was an employee of the company (p. 376).

Also in *Matter of Duplex Printing Press Co. and Lodge No. 46, International Association of Machinists*,<sup>1</sup> the Board certified on the basis of a stipulation entered into by the company and the union during the hearing, which provided *inter alia*—

3. That Lodge No. 46, International Association of Machinists, has been designated as the representative of a majority of the employees of the Duplex Printing Press Company in said "craft unit" described in paragraph 2 hereof for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

4. That the Duplex Printing Press Company hereby accepts Lodge No. 46, International Association of Machinists, as the exclusive representative of all the employees in such "craft unit" described in paragraph 2 hereof, for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment (p. 83).

However, in *Matter of United States Stamping Co. and Porcelain Enamel Workers' Union No. 18630*,<sup>2</sup> although the union submitted 282 cards purported to have been signed by employees desiring the union to represent them, the Board said:

This would give the union a clear majority of the 411 production and maintenance employees whom the company employed during this period. However, the evidence presented by the cards is entirely *ex parte* in character. Although the Board may of course act on *ex parte* evidence and make findings of fact based thereon, we feel that under all the circumstances of this case an election should be held (p. 126).

Also in *Matter of The Belmont Stamping & Enameling Co., a corporation, and Stamping & Enameling Workers Federal Labor Union No. 18816*,<sup>3</sup> an election was ordered, although—

10. At the hearing the union presented 230 cards (a majority of those eligible) recently signed by employees in said unit authorizing the union to represent the signatories in collective bargaining with the company. The company refuses to recognize that said cards indicate that a majority of the employees in said unit desire the union so to represent them, and contends that many of the signatures were obtained by coercion and compulsion (p. 380).

## 2. THE EXISTENCE OF A QUESTION CONCERNING REPRESENTATION

Section 9 (c) empowers the Board to certify, or to direct an election, only if a question concerning the representation of employees has arisen. Whether or not such a question exists depends on the facts in each case. The facts existing in the cases decided are too diversified to allow cataloging. Many of the cases where such a question has been found to exist involve the presence of two or more labor organizations within the same plant. It may be that the employer is dealing with one to the exclusion of the other as in *Matter of Pittsburgh Steel Company and Amalgamated Association of Iron, Steel, and Tin Workers of North America*; *All Nations Lodge No. 164, Monessen, Pennsylvania*, and *Allenport Lodge No. 160, Allenport, Pennsylvania*,<sup>4</sup> and in *Matter of Dwight Manufacturing Com-*

<sup>1</sup> 1 N. L. R. B. 82.

<sup>2</sup> 1 N. L. R. B. 123.

<sup>3</sup> 1 N. L. R. B. 378.

<sup>4</sup> 1 N. L. R. B. 256.

pany and Local No. 1878, *United Textile Workers of America*;<sup>1</sup> or it may be that the employer is dealing with each of the organizations as the representative of its membership, as in *Matter of Bendix Products Corporation and Local No. 9, International Union, United Automobile Workers of America*,<sup>2</sup> and in *Matter of International Nickel Company, Inc., and Square Deal Lodge No. 40, Amalgamated Association of Iron, Steel, and Tin Workers of North America*.<sup>3</sup>

Such a question may also arise where only one labor organization exists within a plant. In such a case, the employer while meeting with the union, may refuse to recognize the right of the union to act for all the employees. Such a situation existed in *Matter of Saxon Mills and Local Union No. 1882, United Textile Workers of America*,<sup>4</sup> where it was found that—

4. Subsequent to the organization of Local No. 1882, a shop committee, composed of three members, was elected by Local No. 1882 for the purpose of meeting and bargaining with the management of the Saxon Mills in matters concerning the employees of the Saxon Mills. The shop committee did so meet with the management of the Saxon Mills, but the management does not and has never acknowledged, although it has been so informed by the shop committee on various occasions, that the shop committee or Local No. 1882 represents a majority of its employees (pp. 154-5).

In *matter of Beaver Mills-Lois Mill and Local No. 1871, United Textile Workers of America*,<sup>5</sup> the company had met with the union in July and August, 1935 without questioning the fact that the union had been designated or selected by a majority of the employees. During a shut-down of the plant which occurred on July 17, 1935 and subsequent to its reopening on October 15, 1935 a civic club in the community caused petitions to be circulated among the employees. These petitions in effect repudiated any desire on the part of the signers to bargain collectively with the company through the union representatives. Under these circumstances a question concerning representation was found to exist.

A question concerning representation exists where the employer has refused to bargain collectively with a union which claims the right to represent the majority of the employees. Such a refusal may be because as stated in the decision in *Matter of United States Stamping Company*,<sup>6</sup> "The management refused to deal with the committee on the ground that the union did not represent a majority of the employees of the company" (p. 126); or it may be, as in *Matter of International Filter Company, a corporation, and International Association of Machinists, District No. 8*,<sup>7</sup> " \* \* \* that there were no grievances on the part of such employees against the respondent \* \* \*" (p. 497). However, it is not essential that a demand has been made and the employer has refused to bargain collectively, for such a question has been found to exist where, as in *Matter of Chrysler Corporation and Society of Designing Engineers*<sup>8</sup>—

It is not known to the union nor does it appear from the record exactly how many employees there are in the unit. \* \* \* Consequently it cannot know positively whether its membership constitutes a majority of the workers in the

<sup>1</sup> 1 N. L. R. B. 309.

<sup>2</sup> 1 N. L. R. B. 173.

<sup>3</sup> 1 N. L. R. B. 907.

<sup>4</sup> 1 N. L. R. B. 153.

<sup>5</sup> 1 N. L. R. B. 147.

<sup>6</sup> 1 N. L. R. B. 123.

<sup>7</sup> 1 N. L. R. B. 489.

<sup>8</sup> 1 N. L. R. B. 164.

unit. The workers thus, do not know whether the union is entitled to represent them (p. 170).

or as in *Matter of Dwight Manufacturing Company*,<sup>1</sup>

19. At the time of the hearing, Local No. 1878 was not functioning openly among the employees then working in the mill, but carried on all its activities with respect to such employees in secret. It still carried approximately 1,300 employees on its books as members in good standing but few of these had paid dues to date and none attending meetings of the local (p. 313).

### 3. DIRECTIONS OF ELECTION

(a) *Date on which eligibility of voters is determined.*—The question of what date shall be used as the one on which the eligibility of employees to vote shall be determined in elections directed by the Board is an important one, due to changes which may have occurred in employment during the period between the filing of the petition and the direction of election. In the ordinary industrial plant under normal conditions, most of the Board's directions of election provide that those persons employed on the date of the direction of election shall be eligible to vote. Such directions, instead of using the specific language of "the date of this direction of election", have also been couched in terms similar to those used in *Matter of Gate City Cotton Mills and Local No. 1938, United Textile Workers of America*,<sup>2</sup> where it was directed that the election should be conducted—

\* \* \*, among the employees \* \* \* on the payroll of the Gate City Cotton Mills on November 2, 1935, and those employed between that date and the date of this decision, excepting \* \* \* those who quit or have been discharged for cause during such period \* \* \* (p. 67).

In this case the date November 2 was chosen because the company at the hearing had submitted a pay-roll list as of November 2.

Subsequently, the Board felt that a more properly worded direction would be, as in *Matter of Pittsburgh Steel Co.*,<sup>3</sup> "employees on the pay roll on the date of the payment of wages immediately preceding the date of this direction \* \* \*," (p. 262) because many companies might not have a completed pay roll as of the date of the direction of election. This wording was followed in later cases, including *Matter of Bendix Products Corporation*<sup>4</sup> and *Matter of Dwight Manufacturing Co.*<sup>5</sup>

In *Matter of International Nickel Co., Inc.*,<sup>6</sup> it was said:

11. At the hearing Lodge No. 40 requested that the payroll which should be taken to determine the eligibility of employees to vote in the election should be the payroll as of the date of the first hearing. The company made no objection to this date (pp. 913-14).

The election order provided accordingly.

In *Matter of Saxon Mills*<sup>7</sup> the petition for investigation and certificate had been filed October 25, 1935 and a hearing had been held on November 21 and 22, 1935. Because a strike had been in effect for several months, the order in this case stated that those eligible to vote would be those persons who were on the pay roll on

<sup>1</sup>1 N. L. R. B. 309.

<sup>2</sup>1 N. L. R. B. 57.

<sup>3</sup>1 N. L. R. B. 256.

<sup>4</sup>1 N. L. R. B. 173.

<sup>5</sup>1 N. L. R. B. 309.

<sup>6</sup>1 N. L. R. B. 907.

<sup>7</sup>1 N. L. R. B. 153.

July 30, 1935, that day being the last working day prior to the strike.

In *Matter of International Mercantile Marine Company and its subsidiaries and affiliates: American Merchant Line, Panama Pacific Line, and United States Lines and International Union of Operating Engineers, Local No. 3*,<sup>1</sup> concerning the representation of licensed engineers employed on vessels operated by these companies, the Board stated:

26. In holding this election we must take into consideration that the various vessels of the company have different sailing dates; that new ships' articles are signed for every roundtrip voyage; that employees normally sign said articles 2 days before sailing, but in some instances not until the day of sailing, making it impossible to know the names of the personnel of a given vessel sufficiently in advance of sailing time to permit a well-ordered election; that a round trip of a vessel may take as long as 2 or 3 months; and that between sailings the employees may be in port only 2 or 3 days (p. 391).

\* \* \* \* \*

28. Due to the peculiar circumstances of this case we find it necessary to limit the right to vote to those engineers within the unit above described who were employed as engineers on any vessel operated by the company at any time between November 7, 1935, the date of the filing of the petition, and the date of the direction of election in this matter and who also make the roundtrip voyage on the respective vessels of the company from New York and return at the conclusion of which the election is to be held (pp. 391-2).

(b) *The period within which the election is directed to be held.*—The direction of election names the person who, as agent of the Board, shall conduct each election, and in the cases of industrial plants states that the election shall be held within a designated period, thus leaving the exact day, as well as the details of the election procedure, to be determined by the agent. The period stated in the direction of election varies from 1 week to 20 days, depending on the circumstances of the case, the most important factor being the number of persons who are to vote. This period ordinarily begins from the date of the direction of election but in some few cases<sup>2</sup> has been stated to begin after the furnishing of a pay roll by the company in accordance with a subpoena issued by the Board.

In *Matter of International Mercantile Marine Company*,<sup>3</sup> the Board, after reciting in paragraph 26 (quoted above) the peculiar circumstance of this case involving employees on board ships, stated:

27. In view of these circumstances and in accordance with the suggestions concurred in by all parties at the hearing, notice of the election will be posted as soon as is convenient on each vessel of the company before it leaves the port of New York on the first trip, if possible, next following the date of the issuance of this decision, and remain in view until the election is held. Such notice of election will be accompanied by a sample ballot and list of engineers eligible to vote in the election. The ballots will be cast in the presence of a representative of this Board upon the return of each vessel to the port of New York at the time and place that the engineers are paid by the company (p. 391).

(c) *Form of the Ballot.*—Where only one labor organization is known to exist within a unit, the Board's direction of election provides that an election shall be conducted to determine whether or

<sup>1</sup> 1 N. L. R. B. 384.

<sup>2</sup> *Matter of Dwight Manufacturing Co.*, 1 N. L. R. B. 309; *Matter of Mosinee Paper Mills Co.*, and *International Brotherhood of Paper Makers and International Brotherhood of Pulp, Sulphite and Paper Mill Workers*, 1 N. L. R. B. 393; *Matter of Crucible Steel Co. of America and Strip Steel and Wire Workers Union, Local No. 20084*, A. F. of L., 1 N. L. R. B. 545.

<sup>3</sup> 1 N. L. R. B. 384.

not the employees desire that union to represent them. In such cases the ballot gives the employees the opportunity to vote for or against the named organization. Where two or more rival unions claim the right to represent the employees, the direction of election provides that the election shall be held to determine which of the organizations the employees desire to represent them, and the organizations are each given a place on the ballot. It may be that the employer has violated section 8, subdivision (2), of the act, with respect to one of such organizations. However, the Board has directed that such an organization be given a place on the ballot<sup>1</sup> unless a charge is filed that the employer is violating section 8, subdivision (2), of the act, and the Board, after hearing, finds the charge sustained.

In *Matter of International Mercantile Marine Company*,<sup>2</sup> the company contended that the voters should be given the privilege of expressing on the ballot a preference for individual bargaining. The Board said:

\* \* \* both section 7 and 9 (a) unmistakably indicate that it is for the purposes of collective bargaining that the act gives employees the right to designate or select representatives. The secret ballot provided for in section 9 (c) is merely one of the devices which this Board is authorized to employ in ascertaining such representatives for purposes of collective bargaining. It is not our function to hold elections in order to determine whether employees desire individual rather than collective bargaining with their employer (p. 391).

#### 4. MAJORITY RULE

In the cases decided under section 9 (c) where the Board has certified without holding an election, it has required proof that a majority of those eligible had designated the organization which was certified.<sup>3</sup>

In all cases decided prior to July 1, 1936, where certification was made after an election was held, the certification was made on the basis that a majority of those eligible, in the unit found appropriate, had designated the organization certified, and that such organization, pursuant to the provisions of section 9 (a) of the act, was the exclusive representative of all employees in such unit for the purposes of collective bargaining.

In *Matter of Chrysler Corporation*,<sup>4</sup> there were 700 persons eligible to vote, and only 125 ballots were cast. The Board refused to make any certification.

#### 5. ELECTION OR CERTIFICATION DURING EXISTENCE OF CONTRACT

The Board has dealt with the question of an election or certification during the existence of a contract. In *Matter of New England Transportation Company and International Association of Machinists*,<sup>5</sup> it was said:

The respondent contends that these agreements, which it states establish a formula for the handling of controversies and provide for wages, hours and

<sup>1</sup> See, for example, *Matter of Dwight Manufacturing Co.*, 1 N. L. R. B. 309, and *Matter of New England Transportation Company and International Association of Machinists*, 1 N. L. R. B. 130.

<sup>2</sup> 1 N. L. R. B. 384.

<sup>3</sup> The Board has followed the same rule in cases arising under sec. 8, subdivision (5), of the act. See sec. C of this chapter, supra, "Collective bargaining."

<sup>4</sup> 1 N. L. R. B. 164.

<sup>5</sup> 1 N. L. R. B. 130.

working conditions, constitute legal obligations now in force and effect and binding upon the employees who signed them. These legal obligations, it asserts, are such as to prevent the Board from now ordering an election to be participated in by these employees. This contention is without merit \* \* \* (pp. 137-8).

\* \* \* The whole process of collective bargaining and unrestricted choice of representatives assumes the freedom of the employees to change their representatives, while at the same time continuing the existing agreements under which the representatives must function (pp. 138-9).

#### 6. JURISDICTIONAL DISPUTES

Although a question concerning representation existed, the Board has dismissed the petitions in three cases which it termed jurisdictional disputes. A jurisdictional dispute was found to exist in *Matter of Aluminum Company of America and Aluminum Workers Union No. 19104*,<sup>1</sup> which arose on a petition which stated that the petitioning union and the National Council of Aluminum Workers Union each claimed to represent the employees in the two plants of the company at Alcoa, Tenn. The petitioner, Aluminum Workers Union No. 19104, is a Federal Labor Union, having a charter from the American Federation of Labor. The National Council of Aluminum Workers was formed under the direction of President Green, of the American Federation of Labor, and is composed of representatives from various plants of the Aluminum Co. of America, including the Alcoa plants, and representatives of aluminum workers' unions in other companies. Prior to negotiations for an agreement with the Aluminum Co. of America in August 1935 the Alcoa local withdrew from the council. It agreed to participate in the negotiations, although not a member of the council, but withdrew from the negotiations before a contract was made. The contract was subsequently completed upon President Green's statement that the Alcoa local would be bound by the contract. Thereafter, the Alcoa local demanded that the company enter into a separate contract with respect to the employees at Alcoa, stating it was not bound by the contract executed by the council. The Board said:

Taking the petition in this case at its face value, the Board is only asked to investigate and certify, pursuant to section 9 (c) of the act, the "name or names of the representatives that have been selected" by the employees at the Alcoa plants. Ordinarily, such a request would involve (1) a decision as to whether the employees at those plants constitute an appropriate bargaining unit within the meaning of section 9 (b); (2) if they do constitute such unit, the holding of an election to determine whom the employees desire as their representatives for collective bargaining; and (3) the certification of the name or names of the representatives chosen at such an election. Normally, such cases arise from situations in which the only organization claiming to represent the employees contends that it represents a majority of the employees in an appropriate unit but the employer refused to bargain with it on the ground that such representation is not established, or in which each of two or more competing organizations claims a majority. The machinery of section 9 (b) and 9 (c) is thus designed to complement and make workable the principle of the majority rule, declared in section 9 (a). Its purpose is simply to resolve, by means of an election or other suitable method, any doubts concerning which, if any, organization can claim the exclusive right to bargain collectively for certain employees.

As stated above, on its face the instant petition appears to present the normal situation described above: One organization, Aluminum Workers Union No. 19104, claims to represent a majority of the employees at the Alcoa plants

<sup>1</sup> 1 N. L. R. B. 530.

of the company. It asserts that another body, the council, contests this claim. It in effect requests an election to resolve the issue thus created. However, the foregoing brief summary of the facts in the case indicates that the issues here are of an essentially different character. A short statement of the real issues in the case makes it clear that under the guise of a petition for certification the parties are presenting entirely different questions to this Board for its decision.

Assuming for the purposes of the argument that the Alcoa plants constitute an appropriate bargaining unit, as the union contends, an election would be necessary to establish the strength of the union. If the union received a majority vote in such an election, the Board would then certify it as the representative of the employees at Alcoa. But such certification would in no way conclude this controversy since the underlying question here is not whether the union shall represent the employees, but rather, who shall represent the union in its dealings with the company. The solution of that question is far from simple. Wetmore, the president of the union, contended before the Board that he speaks for the union in all matters, including its dealings with the company. He claims that his contention is supported by the actual wishes of the members of the union. With equal vigor, Williams asserted that the applicable rules of the American Federation of Labor demand that the Alcoa union bargain only in concert with the other unions through the council which he heads and that consequently that body and not Wetmore speaks for the Alcoa union in its dealings with the company. It may be observed, so as further to point the problem, that the rules of the American Federation of Labor, as applied to this case, are by no means free from doubt. The Alcoa union is a Federal labor union directly chartered by the American Federation of Labor. The constitution of the federation in article XIV provides as follows:

"Sec. 2. The executive council (of the federation) is authorized and empowered to charter local trade unions and federal labor unions, to determine their respective jurisdictions not in conflict with national and international unions, to determine the minimum number of members required, qualifications for membership, and to make rules and regulations relating to their conduct, activities and affairs from time to time and as in its judgment is warranted or deemed advisable."

While this section was referred to by Williams, he did not offer evidence of any action by the executive council itself directed to the instant case or any delegation of authority to President Green, but introduced only the ruling of the latter. While it might be said that a strict and technical view would therefore make that ruling of President Green inapplicable, it must be remembered that Wetmore and the organization he represents are still, and voluntarily, parts of a larger organization and that Green is its president. It is possible that the unwritten law of tradition and custom makes his rulings binding within the federation until altered. However, as hereinafter appears, in our view of the case it becomes unnecessary to resolve these opposing contentions.

The course and conduct of the future bargaining of the Alcoa union is thus bound up with the question of who shall speak for that union. The real question is therefore who represents and speaks for the Alcoa union and not whether that union represents a majority of the employees at Alcoa. The Board feels that the question is not for it to decide. Such a question, involving solely and in a peculiar fashion the internal affairs of the American Federation of Labor and its chartered bodies, can best be decided by the parties themselves (pp. 535-7).

A jurisdictional dispute was also found to exist in *Matter of The Axton-Fisher Tobacco Company and International Association of Machinists, Local No. 681*, and *Tobacco Workers' International Union, Local No. 16*, and in *Matter of Brown and Williamson Tobacco Corporation and International Association of Machinists, Local No. 681*, and *Tobacco Workers' International Union, Local No. 185*.<sup>1</sup> The Tobacco Workers International Union, Local No. 16, an organization chartered by a parent body affiliated with the American Federation of Labor, and the International Association of Machinists, Local No. 681, also affiliated through its parent body with

<sup>1</sup> 1 N. L. R. B. 604.



the American Federation of Labor, both claimed jurisdiction by virtue of their charters over the machine fixers within these companies' plants. The Board in this decision said:

\* \* \* the National Labor Relations Act did not give rise to these problems (jurisdictional disputes). They occurred before, they will doubtless occur again, and they have prompted the majority of labor organizations in this country to establish a procedure of their own creation and management for their solution. While the act provides a new vocabulary in which such jurisdictional disputes may be described, it does not alter their nature. The instant case affords an apt illustration. The machinists' union claims that the machinists proper and the machine fixers constitute together a "unit appropriate for the purposes of collective bargaining" in the terminology of section 9 (b). The tobacco workers' union contends that the tobacco workers and the machine fixers belong together and as such constitute an appropriate unit, as do the machinists alone. But such use of the act's terminology does not disguise the real issue. Since both employers operate on a closed-shop basis, each employee in the plants must join some union. Obviously, a craftsman will join the union to which other members of his craft belong and which is recognized by the American Federation of Labor as having jurisdiction over that craft. As long as the machinists' union has recognized jurisdiction over machinists in the tobacco industry, a machinist will belong to that union. Similarly, a decision by the American Federation of Labor on the jurisdictional question involving the machine fixers would determine to which organization they will choose to belong, unless for some reason the parent body is defied. Consequently, the issue remains as simply a jurisdictional dispute between two labor organizations. Each recognizes the jurisdictional character of the other—tobacco workers and machinists; the question involves only the drawing of a precise boundary line (p. 611).

\* \* \* Both of the labor organizations involved in the instant cases are affiliated with the American Federation of Labor and possess charters from that body. In view of the structure of that body, the instant controversy is simply a dispute involving the internal affairs of a labor organization, here the American Federation of Labor. That dispute resembles the hundreds of other jurisdictional questions handled by the Federation and is clearly of a type which it has power to decide. There thus exists a body to which these two organizations belong and which has the authority to render a binding decision on the dispute between them. Under such circumstances, the Board is of the opinion that it should not intervene in the dispute for the reasons stated in the *Aluminum Co.* case (pp. 612-3).<sup>1</sup>

The reason for the Board's refusal to interfere in such cases is stated in *Matter of Aluminum Co. of America*:<sup>2</sup>

It is preferable that the Board should not interfere with the internal affairs of labor organizations. Self-organization of employees implies a policy of self-management. The role that organizations of employees eventually must play in the structure established by Congress through that act is a large and vital one. They will best be able to perform that role if they are permitted freely to work out the solutions to their own internal problems. In its permanent operation the act envisages cohesive organizations, well-constructed and intelligently guided. Such organizations will not develop if they are led to look elsewhere for the solutions to such problems. In fine, the policy of the National Labor Relations Act is to encourage the procedure of collective bargaining and to protect employees in the exercise of the rights guaranteed to them from the denial and interference of employers. That policy can best be advanced by the Board's devoting its attention to controversies that concern such fundamental matters (pp. 537-8).

<sup>1</sup> See also: *Matter of Standard Oil Company of California and International Association of Oil Field, Gas Well and Refinery Workers of America*, 1 N. L. R. B. 614, where the rule was followed even though several of the unions involved had no actual members among the employees in the alleged bargaining unit.

<sup>2</sup> 1 N. L. R. B. 530.

and also in *Matter of The Axton-Fisher Tobacco Co.*<sup>1</sup> and in *Matter of Brown and Williamson Tobacco Corporation*.<sup>2</sup>

It is perhaps unnecessary to point out that the internal dispute presented in these cases is merely one of many now existing within the American Federation of Labor and other organizations of labor. Some of these disputes, obviously difficult of solution, are far-reaching and fundamental to the labor movement; others are small by comparison. But in either case, it is preferable that in the light of the declared policy of Congress—"the exercise by workers of full freedom of association, self-organization and designation of representatives of their own choosing"—the Board should leave organizations of labor free to work out their own solutions through the procedure they themselves have established for that purpose (p. 613).

#### F. THE UNIT APPROPRIATE FOR THE PURPOSES OF COLLECTIVE BARGAINING

Section 9 (b) of the act provides that—

The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

Such a determination is required in two types of cases: (1) Petitions for investigation and certification of representatives, pursuant to section 9 (c) of the act, and (2) complaints charging that an employer has refused to bargain collectively with the representatives of his employees, in violation of section 8, subdivision (5) of the act.<sup>3</sup> In each instance a finding as to the appropriate unit is indispensable to the ultimate decision. A certification of representatives would be meaningless in the absence of a finding defining the unit to be represented. Similarly, a complaint alleging that an employer has refused to bargain collectively with the representatives of his employees may be sustained only if such representatives were designated by employees in a unit appropriate for purposes of collective bargaining.<sup>4</sup>

Experience has proven the wisdom of delegating to the Board the task of deciding in each case the unit appropriate for purposes of collective bargaining. The complexity of modern industry, transportation, and communication, and the numerous and diverse forms which organization among employees has taken, preclude the application of rigid rules to determine the unit appropriate in each case.

Self-organization among employees is generally grounded in a community of interest in their occupations, and qualifications, experience, duties, wages, hours, and other working conditions related thereto. The craft union composed of employees skilled in a given line of work represents one pattern which such organization has taken. The semi-industrial or horizontal form of organization, including generally all production and maintenance employees of a given employer, is another outgrowth of this common interest.

<sup>1</sup> 1 N. L. R. B. 604.

<sup>2</sup> For a discussion of cases in which the Board would ordinarily have determined the unit appropriate for purposes of collective bargaining, except for jurisdictional disputes current between labor organizations, see sec. G, *supra*.

<sup>3</sup> Sec. 8, subdivision (5) of the act is expressly subject to sec. 9 (a), which reads in part as follows: "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment \* \* \*."

While the craft and semi-industrial unions constitute the major patterns, a number of variations have arisen representing adaptations to special circumstances.

In order to permit employees that freedom of self-organization which is their due under the act, the Board has studied closely the factors motivating such organization, and the forms most conducive to effective collective bargaining, to the end that its decisions as to the unit may further collective bargaining and self-organization among employees.

The considerations generally entering into the designation of a unit are: (1) The history of labor relations in the industry and between a particular employer and his employees as relates to collective bargaining units; (2) the community of interest or lack of such interest among employees in the matter of qualifications for work, experience, duties, wages, hours, and other working conditions; (3) the organization of the business of the employer from a functional, physical, and geographical viewpoint; and (4) the form which efforts at self-organization among the employees has taken, including the prerequisites for membership in the projected or established labor organization or organizations.

The precise weight to be given to any one of these factors cannot be mathematically stated. Generally, several of the considerations mentioned enter into a given decision, as a brief resumé of the cases will show.

#### 1. HISTORY OF LABOR RELATIONS IN THE INDUSTRY, AND BETWEEN THE EMPLOYER AND HIS EMPLOYEES

The recognition, through an established course of dealing, or otherwise, in an industry generally, or between an employer and his employees, that a certain class of employees constitutes a unit appropriate for purposes of collective bargaining is an important consideration in the determination of the appropriate unit. A unit established on such a basis encourages self-organization among the employees and facilitates collective bargaining.

In *Matter of M. H. Birge & Sons Co. and United Wall Paper Crafts of North America*,<sup>1</sup> the fact that for the last 14 years the union manufacturers in the industry negotiated agreements with the union on behalf of color mixers, machine printers and print cutters, and that for at least 40 years the respondent had bargained collectively with the union or its predecessors regarding the same classes of workers employed by it, was held to be controlling in determining the unit.<sup>2</sup>

In *Matter of International Mercantile Marine Co. et al. and International Union of Operating Engineers, Local No. 3*,<sup>3</sup> it was considered of vital importance—

that in the labor relations of the shipping industry the chief, assistant, and junior engineers have for many years been considered a homogeneous group and treated as a unit \* \* \*

<sup>1</sup> 1 N. L. R. B. 731.

<sup>2</sup> The machine printers and color mixers belonged to one local and the print cutters to another local of the same union. Annually each local signed a separate agreement with the respondent, but both agreements were customarily negotiated by the United Wall Paper Crafts of North America.

<sup>3</sup> 1 N. L. R. B. 384.

and

\* \* \* that whenever a contract is entered into between a shipping company, employing all three classes of engineers, and one of said unions,<sup>1</sup> the contract invariably covers wages, hours and working conditions of the chief, assistant, and junior engineers<sup>2</sup> (p. 388).

Again in *Matter of Bell Oil and Gas Co. and Local Union 258 of the International Association of Oil Field, Gas Well and Refinery Workers of America, et al.*,<sup>3</sup> stress was laid on the fact that—

Both the respondent and Local 258 have in the past treated the employees in the repressure, production and pipe-line departments as comprising one unit, separate and distinct from the employees in the refinery and the Pampa field<sup>4</sup> (p. 579).

## 2. SKILL

Organization of skilled employees along craft lines is an outgrowth of the identity of problems confronting those engaged in a common pursuit. Generally, the wages, hours, and working conditions of the skilled craftsman are different from those of other employees of the same employer, necessitating special treatment in collective bargaining. Therefore, ordinarily, where employees of a given craft, through efforts at self-organization, have manifested a desire for a unit limited to members of their craft, such a unit has been approved. Such a decision is facilitated in cases where there is no more inclusive unit seeking to be declared the appropriate unit.

In *Matter of The Canton Enameling & Stamping Co. and Canton Lodge No. 812, International Association of Machinists*,<sup>5</sup> the union charged that the respondent refused to bargain collectively with it, the representative of the respondent's machinists. The respondent's answer to the complaint denied, among other things, that the machinists employed at its plant constitute a unit appropriate for purposes of collective bargaining. The Board found that—

The machinists are engaged in work of a highly skilled nature and receive wages substantially greater than the average wages received by employees of the production departments \* \* \*;

that—

It is obvious that the various problems which confront the employees of respondent from day to day in respect to rates of pay, wages, hours of employment, and other conditions of employment may be totally different in the case of the machinists than in the case of production employees \* \* \*;

and that the machinists therefore constitute a unit appropriate for purposes of collective bargaining<sup>6</sup> (p. 406).

<sup>1</sup> Three unions purported to represent engineers employed by the company.

<sup>2</sup> The International Mercantile Marine Co. had contended for three distinct units among the engineers.

<sup>3</sup> 1 N. L. R. B. 562.

<sup>4</sup> The respondent and the union some time previously had entered into a contract covering wages, hours, and working conditions of employees in those departments only. For a similar ruling see *Matter of S. L. Allen & Co., Inc., and Federal Labor Union Local No. 18526*, 1 N. L. R. B. 714.

<sup>5</sup> 1 N. L. R. B. 402.

<sup>6</sup> See also *Machinists, apprentices, and helpers: Matter of Duplex Printing Press Co. and Lodge No. 46, International Association of Machinists*, 1 N. L. R. B. 82; in *Matter of New England Transportation Co. and International Association of Machinists*, 1 N. L. R. B. 130; and *Matter of International Filter Co. and International Association of Machinists, District No. 8*, 1 N. L. R. B. 489. Ship carpenters, caulkers, and joiners: *Matter of Harbor Boatbuilding Co. and Ship Carpenters Local Union No. 1335*, 1 N. L. R. B. 349. Printing pressmen and assistants: *Matter of Edward E. Cox, Printer, Inc., and International Printing Pressmen and Assistants' Union, Local No. 376*, 1 N. L. R. B. 594. Blank cutters: *Matter of Pioneer Pearl Button Co. and Button Workers' Union, Federal Local 20026*, 1 N. L. R. B. 837.

In *Matter of Chrysler Corporation and Society of Designing Engineers*,<sup>1</sup> the testimony showed that the designing engineers employed by the company may be classified into three main groups—chassis, body, and tool and die designers—and that each in turn has certain subclasses, the members of which have special aptitudes and experience. In holding that all the designing engineers engaged by the company constitute a unit appropriate for purposes of collective bargaining, the Board said:

Practically all have received professional training in technical schools or colleges. The training is of a distinctive type. The men are fitted by training and experience to work in more than one of the subclassifications listed above and can move from a lower to a higher rating. The group is distinguished in function and training from clerical and production workers on the one hand and from electrical and chemical engineers on the other<sup>2</sup> (p. 168).

### 3. FUNCTIONAL COHERENCE

The rise of the mass-production industries and the ensuing division of the work of the craftsman into a number of minute processes impelled the formation of labor organizations along lines of functional coherence, embracing usually production and maintenance employees, and excluding clerical and supervisory staffs. The Board has dealt with the problems relating to such a unit for purposes of collective bargaining in a number of cases.<sup>3</sup>

In *Matter of United States Stamping Company and Porcelain Enamel Workers' Union No. 18630*,<sup>4</sup> the union claimed that only the production and maintenance employees constituted a unit appropriate for purposes of collective bargaining, while the company contended that all of its employees, including clerical and supervisory, constituted such a unit. The Board said:

The office force includes typists, clerks, and the sales manager. In general, it is clear that they constitute a group with functions sharply distinguished from that of the employees engaged in actual processing operations, are paid on a salary basis as against piece-rate and hour-rate bases governing the production and maintenance group, are paid on the 15th and 30th of each month while the production and maintenance employees are paid on the 7th and 23rd of each month, and are regarded by the latter and by themselves as a distinct department. At the hearing they made no claim to be recognized as an independent bargaining unit or to be included in a total employer unit.

The foremen and assistant foremen are paid respectively on a salary and an hourly basis and ought also to be excluded as having supervisory authority and duties that relate them more directly to the management than to the workers.

The one unit clearly defined as to function and interest in establishing a mechanism for collective bargaining is the production and maintenance unit engaged in the actual processing of enamelware and incident activities, and not the total number of employees of the company as contended for by counsel for

<sup>1</sup> 1 N. L. R. B. 164.

<sup>2</sup> See also *Marine engineers: Matter of Delaware-New Jersey Ferry Co. and Marine Engineers' Beneficial Association No. 13*, 1 N. L. R. B. 85. *Matter of International Mercantile Marine Co. et al. and International Union of Operating Engineers, Local No. 3*, 1 N. L. R. B. 384.

<sup>3</sup> In *Matter of International Nickel Co., Inc., and Square Deal Lodge No. 40. Amalgamated Association of Iron, Steel, and Tin Workers of North America*, 1 N. L. R. B. 907, the collective bargaining unit held to be appropriate consisted of service and transportation employees in addition to production and maintenance employees. This approaches more nearly the industrial form of organization. In addition to the usual clerical and supervisory staffs, the timekeepers, police, and hospital employees were also excluded. In *Matter of Segall-Maigen, Inc., and International Ladies Garment Workers' Union, Local No. 50*, 1 N. L. R. B. 749, the appropriate unit was held to be the production employees at respondent's factory, excepting cutters, and those in clerical and supervisory positions. But for the fact that the cutters had their own labor organization, they would have been included in the appropriate unit.

<sup>4</sup> 1 N. L. R. B. 123.

the company. The production and maintenance department was described in the testimony as consisting of welding, press, enameling, dipping, spraying, beading, baking, packing, shipping, pickling, maintenance, day laborers, and night watchmen (p. 127).

In *Matter of the Timken Silent Automatic Company and Earl P. Ormsbee, Chairman, Executive Board, Oil Burner Mechanics Association*,<sup>1</sup> the union alleged, and the respondent denied, that all who were employed at the Long Island City branch of the respondent, with the exception of clerical and supervisory staffs, constituted an appropriate unit. The Board found that:

The employees in the branch are divided into five groups: installation, inspection (of installations), service (subsequent to installation), garage, and stockroom. Though it is not the regular practice to shift men from one division to another, it is not unusual for installation men to go on service nor for either of these groups to lend a hand in the stockroom or the garage. This is borne out by the fact that a number of the men here concerned have been at one time or another used in installation, inspection, and service work.

The union was first organized in February 1935 by a group of employees in the branch, and is a labor organization. Employees in the installation, inspection, service, garage, and storeroom departments were eligible. The employees in these departments comprised all employees with the exception of the clerical staff, and constitute, with the exception of the supervisory and clerical staff, a unit appropriate for the purposes of collective bargaining (p. 339).

#### 4. MUTUAL INTEREST

One of the prime considerations entering into a decision on the appropriate unit is whether it will operate for the mutual benefit of all employees included in the unit. To express it another way, is there that community of interest among the employees which is likely to further harmonious organization and facilitate collective bargaining? The Board discussed this question in *Matter of International Mercantile Marine Company et al.*<sup>2</sup> In that case the petitioning union had requested that chief engineers, assistant engineers, and licensed junior engineers employed by the company together be considered a single bargaining unit, while the company had contended that each class of engineers should be in a unit apart from the others. After pointing out the similarities, and some few differences, in qualifications, experience, and duties of the three classes of engineers, the Board went on to state that:

From the viewpoint of economic interest all three classes are vitally interdependent and realistically one. All engineers must sign new articles of agreement for every round trip voyage. The company recognizes no seniority rights. A chief engineer on one voyage may be an assistant, a junior, or even unemployed on the following voyage. Similarly, an engineer employed as a junior on one occasion may be an assistant or a chief when next he signs ships' articles. This condition is enhanced by the transfer of men among the various vessels of the company. Since the status of the engineer is subject to change upon such short notice within the range of all three classes, it is patent that each of the engineers has an economic interest in the wage rate and working conditions of all who are employed as engineers regardless of rank (p. 389).

The Board held therefore that the chief, assistant, and junior engineers constituted a unit appropriate for purposes of collective bargaining.<sup>3</sup>

<sup>1</sup> 1 N. L. R. B. 335.

<sup>2</sup> 1 N. L. R. B. 384.

<sup>3</sup> See also: *Matter of Wayne Knitting Mills, Inc.*, and *The American Federation of Hosiery Workers, Branch No. 2*, 1 N. L. R. B. 53; and *Matter of United States Stamping Co.*, 1 N. L. R. B. 123.

## 5. WAGES

Frequently the wage rate, or the basis upon which employees are paid, is sufficient to distinguish one group from other employees of the same employer. For example, all employees paid by the hour may be production workers, while those paid weekly may be clerical employees. A common wage rate or basis of payment thus may serve to identify a class of employees of one employer uniformly affected by wages, hours, and working conditions, and hence interested in bargaining as a unit.

In *Matter of Bendix Products Corporation and Local No. 9, International Union, United Automobile Workers of America*,<sup>1</sup> the Board held that all employees of the company paid on an hourly basis, except supervisory and clerical employees, policemen, and nurses, constitute a unit appropriate for purposes of collective bargaining.<sup>2</sup>

## 6. ORGANIZATION OF EMPLOYER'S BUSINESS

We have already seen that the organization of the employer's business has in some instances caused a realignment of employees from a craft to a functional basis. In similar manner, the arrangement of the employer's business in such a manner as to create well-defined and separate departments, or geographically to separate one of his plants from another, may necessitate the establishment of correspondingly separate units for purposes of collective bargaining.

In *Matter of Mosinee Paper Mills Co. and International Brotherhood of Pulp, Sulphite and Paper Mill Workers*,<sup>3</sup> the Board said:

The company's mill, like other units in the industry, is divided into two more or less distinct parts. One consists of the treatment of raw material as far as it is in the condition of pulped cellulose half-stuff, ready for the paper-making operation proper. The other consists of the transformation of the pulped cellulose slurry thus formed into paper by the paper making process proper. Traditionally the organization of workers in paper mills has followed these distinct divisions, and they are followed by the unions with respect to their jurisdictions. The same situation obtains in the company's mill and there is no conflict between the unions as to jurisdiction (p. 399).

The Board therefore held that two separate units, corresponding to the two distinct processes, were appropriate for purposes of collective bargaining.<sup>4</sup>

In *Matter of Atlantic Refining Co. and Local Nos. 310 and 318, International Association of Oil Field, Gas Well, and Refinery Workers of America*,<sup>5</sup> the respondent operated three refineries in the State of Pennsylvania, and one, the Brunswick plant, in the State of Georgia. The latter plant was under the immediate supervision of managerial personnel different from that at the other plants. The Board stated the following as one of the reasons for holding that the employees engaged at the Brunswick plant, with the exception of clerical and supervisory staffs, constitute a unit appropriate for purposes of collective bargaining:

<sup>1</sup> 1 N. L. R. B. 173.

<sup>2</sup> See also: *Matter of Pioneer Pearl Button Co. and Button Workers' Union, Federal Local 20026*, 1 N. L. R. B. 837, where unlike all other employees engaged at the plant of the company, who were paid on a time basis, the blank cutters were paid on a piece basis, and were held to constitute an appropriate unit.

<sup>3</sup> 1 N. L. R. B. 393.

<sup>4</sup> For similar division of a unit along lines of organization of the employer's business see: *Matter of Bell Oil & Gas Co.*, 1 N. L. R. B. 562.

<sup>5</sup> 1 N. L. R. B. 359.

Because of the geographical differences between the Brunswick plant and the other plants and units of the respondent, the labor problems of the employees at the Brunswick plant differ from those of the respondent's employees elsewhere. The rates of pay for certain operations at the Brunswick plant are different from those at the respondent's other plants. The Brunswick plant is approximately 900 miles from the other refineries and from the home office of the respondent, and therefore a prompt and clear exchange of views between the employees at Brunswick and the employees at the other refineries is difficult<sup>1</sup> (pp. 364-5).

#### 7. FORM OF SELF-ORGANIZATION AMONG EMPLOYEES

Although section 9 (b) of the act vests in the Board discretion to decide in each case whether the unit shall be the employer unit, craft unit, plant unit, or subdivision thereof, that discretion must be exercised in a manner calculated "to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this act." Accordingly, in determining the unit the Board has given great weight to the desire of the employees themselves, especially as manifested by efforts at self-organization.

In *Matter of Atlantic Refining Co.*,<sup>2</sup> after pointing out the difficulties raised by the geographical differences between the Brunswick, Georgia, plant and the Pennsylvania plants of the respondent, the Board added the following:

The employees' representation plan, which purports to cover not only the employees at the Brunswick plant but the employees of the respondent at its other refineries and properties as well, was put into effect by the respondent in October 1934, several months after the locals were organized. By organizing as they did before the plan was put into effect, and by clear manifestations since, the employees at the Brunswick plant have definitely indicated their desire to bargain as a unit through the locals and not through the plan. In view of this and the other circumstances of this case, we find that the employees, with the exception of the clerical and supervisory staffs, engaged at the Brunswick plant of the respondent constitute a unit appropriate for the purposes of collective bargaining" (p. 365).

Again, in *Matter of Chrysler Corporation*,<sup>3</sup> the Board, holding that the designing engineers of the company constitute an appropriate unit, said:

It appears that by training, experience, and employment they constitute a homogenous and distinctive labor group; that a great many of them have shown a desire for self-organization and self-representation in questions relating to the terms and condition of their employment, and that no other group has sought or made claim to represent them (p. 169).

In *Matter of International Mercantile Marine Co. et al.*,<sup>4</sup> the Board denied a motion of the United Licensed Officers of the United States of America to include deck officers and licensed engineers of the company in a single unit, for the following reasons:

In passing upon this motion we also take into consideration the fact that there are already in this field two well-established labor organizations, the Marine

<sup>1</sup> For a similar geographical separation of plants and correspondingly separate units see: *Matter of Pittsburgh Steel Co. and Amalgamated Association of Iron, Steel, and Tin Workers of America, et al.*, 1 N. L. R. B. 256. But see *Matter of New England Transportation Co. and International Association of Machinists*, 1 N. L. R. B. 130, where employees of mechanical departments in 13 garages operated by this company in 13 cities of the United States were held to constitute a single unit appropriate for purposes of collective bargaining for the reason that the employees had chosen so to organize.

<sup>2</sup> 1 N. L. R. B. 359.

<sup>3</sup> 1 N. L. R. B. 164.

<sup>4</sup> 1 N. L. R. B. 384.



Engineers Beneficial Association and Local No. 3, whose membership is limited to engineers, and a third established labor organization, the Masters, Mates, and Pilots, restricted to deck officers. In the light of this situation, in the absence of proof of a present desire on the part of engineers and deck officers to combine in one unit, and in view of the marked difference in qualifications, responsibilities, and duties between the engineers and deck officers, we are of the opinion that the policy of the act would be best served here by not requiring that deck officers and engineers be combined in one unit for purposes of collective bargaining (p. 390).

In *Matter of New England Transportation Co. and International Association of Machinists*,<sup>1</sup> the company employed mechanical employees and bus and truck drivers. The only two labor organizations functioning among the employees limited membership to employees of the mechanical department. The Board concluded that the employees engaged in the mechanical department constituted a unit appropriate for purposes of collective bargaining for the following reasons:

While the interests of the mechanical employees are not so dissimilar from those of the bus and truck operators as to prevent their being considered as one unit under appropriate circumstances, they are sufficiently diverse to permit the mechanical employees of the respondent properly to consider themselves a separate unit for collective bargaining. Neither of the organizations claims that the bargaining unit should be more inclusive (p. 136).

#### 8. ELIGIBILITY TO MEMBERSHIP IN LABOR ORGANIZATION

In deciding upon the appropriate unit, the Board has also taken into consideration the qualifications for membership in any labor organization current among the employees in question, for if such organizations are formed of the employees' free will the qualifications for membership therein will reflect the unit desired by the employees themselves. The following case is representative of the circumstances under which the Board has defined the unit to be co-terminous with eligibility requirements for membership in a given labor organization.

In *Matter of International Filter Co. and International Association of Machinists, District No. 8*,<sup>2</sup> the Board was concerned with 70 workers employed by the respondent, 46 of whom were engaged as machinists, or allied craftsmen, and 24 in the shipping and other departments. The machinists and allied craftsmen were eligible to membership in the union, while the remaining 24 employees were not. The Board said:

The situation of the 46 machinists and allied craftsmen eligible to union membership in respect to collective bargaining is different from that of the other workers. These 46 workers are allied by common problems of skill and community of interest; they alone of the respondent's employees are eligible to membership in the union. They constitute a homogeneous and distinct group among the respondent's employees.

In the absence of evidence in the record of any request or expressed desire by the 24 workers not eligible to membership in the union for representation by the union or anyone else \* \* \* (p. 494).

the Board held the machinists and allied craftsmen employed by the respondent to constitute a unit appropriate for purposes of collective bargaining.

<sup>1</sup> 1 N. L. R. B. 130.

<sup>2</sup> 1 N. L. R. B. 489.

At this point it should again be emphasized that units are worked out upon the basis of the facts presented in each case. In some cases, as in the instant one, certain employees were excluded from the appropriate unit because they evidenced no desire to be included, while in other cases, such as in *Matter of International Mercantile Marine Co., et al.*, certain employees were excluded because they expressed a preference for another unit.<sup>1</sup> Should such conditions change, it may be necessary to redefine the units in the light of the altered circumstances.

## ADMINISTRATIVE REMEDIES

### 1. PROVISIONS OF THE NATIONAL LABOR RELATIONS ACT GOVERNING ORDERS

Section 10, subdivision (c), of the act reads in part as follows:

\* \* \* If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. \* \* \*

### 2. TYPES OF ORDERS ISSUED BY THE BOARD

#### (a) *Orders requiring employers to cease and desist from engaging in unfair labor practices*

1. *Cease and desist orders in cases where the Board has found that an employer has engaged in unfair labor practices within the meaning of section 8, subdivision (1), of the act.*—In cases in which the Board has found that an employer has interfered with, restrained, or coerced his employees in the exercise of the rights guaranteed in section 7 of the act, it has issued an appropriate order, in compliance with the duty imposed upon it by that part of section 10, subdivision (c), of the act, set forth above, requiring the employer to cease and desist from such action. In most of the cases decided by the Board such orders have been general in nature and uniformly patterned along the lines of the order embodied in its decision in *Matter of Pennsylvania Greyhound Lines, Inc., Greyhound Management Company, and Local Division No. 1063 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America*.<sup>1</sup> In that case the Board, having found that the respondents, Pennsylvania Greyhound Lines, Inc., and Greyhound Management Co., had interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in section 7 of the act, ordered the respondents, their officers and agents to—

cease and desist from in any manner interfering with, restraining or coercing their employees, including the employees of the Pennsylvania Greyhound system, in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their

<sup>1</sup> N. L. R. B. 384. In that case electrical engineers were excluded from the unit embracing marine engineers, for the reason that the electrical engineers had formed a union of their own and asked to be excluded from the unit in question.

<sup>2</sup> N. L. R. B. 1.

own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in section 7 of the National Labor Relations Act (p. 51).<sup>1</sup>

In certain cases where the Board has found a violation of section 8, subdivision (1), of the act, on the basis of additional facts separate and distinct from those supporting findings of a violation of any of the remaining subdivisions of section 8, it has issued in addition to the general cease and desist order above described, another order requiring the employer to cease and desist from engaging in the specific conduct and activities which constitute the violation of subdivision (1) of section 8.<sup>2</sup>

In several cases where the Board found a violation of section 8, subdivision (1), of the act solely by virtue of a finding of a refusal to bargain collectively in violation of section 8, subdivision (5), of the act, it has deemed it unnecessary to issue a general cease and desist order such as is normally issued in cases involving violations of section 8, subdivision (1), of the act. In such cases, the order requiring the employer to cease and desist from refusing to bargain collectively with the representatives of his employees was sufficient under the circumstances.<sup>3</sup>

Discussion of orders requiring affirmative action in cases involving a violation of section 8, subdivision (1), of the act, will be found in a later section.<sup>4</sup>

2. *Cease and desist orders in cases where the Board has found that an employer has engaged in unfair labor practices within the meaning of section 8, subdivision (2), of the act.*—Cease and desist orders issued by the Board in compliance with the duty imposed upon it by that part of section 10, subdivision (c), of the act, set forth above, have in cases involving so-called "company-controlled,"

<sup>1</sup> Similar cease and desist orders were issued by the Board in the following representative cases involving interference with, restraint, or coercion of employees in the exercise of the rights guaranteed in section 7 of the act; *Matter of Fruehauf Trailer Company, and United Automobile Workers Federal Union No. 19375*, 1 N. L. R. B. 68; *Matter of Baer Co., Inc., and United Textile Workers of America*, 1 N. L. R. B. 159, where such an order was issued upon a stipulation entered into between the Baer Co., Inc., and the Board at the hearing, whereby the Baer Co., Inc., agreed "that it would not interfere with, coerce, or restrain its employees in the exercise of the rights guaranteed by section 7 of the National Labor Relations Act \* \* \*," and whereby it further agreed that the Board could issue its order to that effect; *Matter of Jones & Laughlin Steel Corporation and Amalgamated Association of Iron, Steel & Tin Workers of North America, Beaver Valley Lodge No. 200*, 1 N. L. R. B. 503; *Matter of The Associated Press and American Newspaper Guild*, 1 N. L. R. B. 788.

<sup>2</sup> See, for example, *Matter of Fruehauf Trailer Company and United Automobile Workers Federal Union No. 19375*, 1 N. L. R. B. 68, where the Board ordered the Fruehauf Trailer Co. to cease and desist from threatening its employees with discharge if they engaged in union activity, and to cease and desist from employing detectives or other persons for the purpose of espionage; *Matter of Clinton Cotton Mills and Local 2182, United Textile Workers of America*, 1 N. L. R. B. 97, where the Board ordered the Clinton Cotton Mills to cease and desist from maintaining surveillance of the meetings and activities of Local 2182 and of the activities of its employees in connection with that organization; *Matter of Brown Shoe Company, Inc., a New York Corporation and Boot and Shoe Workers Union, Local No. 655*, 1 N. L. R. B. 803, where the Board ordered the Brown Shoe Co., Inc., to cease and desist from in any manner inducing and causing citizens and public officials, and its supervisory and other employees to interfere with, restrain, or coerce, its employees in the exercise of the rights guaranteed in section 7 of the act; and *Matter of Atlanta Woolen Mills and Local No. 2807, United Textile Workers of America*, 1 N. L. R. B. 316, where the Board ordered the Atlanta Woolen Mills to cease and desist from requiring applicants for employment to divulge information respecting their affiliation with any labor organization.

<sup>3</sup> See, for example, *Matter of Columbian Enameling & Stamping Co. and Enameling and Stamping Mill Employees Union No. 19694*, 1 N. L. R. B. 181; *Matter of Harbor Boat-building Co., a Corporation and Ship Carpenters Local Union, No. 1335*, 1 N. L. R. B. 349; *Matter of Atlantic Refining Company; and Local Nos. 310 and 318, International Association of Oil Field, Gas Well and Refinery Workers of America*, 1 N. L. R. B. 359; and *Matter of The Canton Enameling and Stamping Company, a Corporation, and Canton Lodge No. 812, International Association of Machinists*, 1 N. L. R. B. 402.

<sup>4</sup> See p. 125, infra.

"company-dominated" or "company-supported" unions been uniformly patterned along the lines of the order issued by the Board in *Matter of Pennsylvania Greyhound Lines, Inc.*<sup>1</sup> In that case the Board, having found that the respondents, Pennsylvania Greyhound Lines, Inc., and Greyhound Management Co. had dominated, interfered with, and contributed financial and other support to a labor organization of their employees known as the Employees Association of the Pennsylvania Greyhound Lines, Inc., ordered the respondents, their officers and agents to—

cease and desist from in any manner dominating or interfering with the administration of the Employees Association of the Pennsylvania Greyhound Lines, Inc., or any other labor organization of their employees, including the employees of the Pennsylvania Greyhound system, and from contributing financial or other support to the Employees Association of the Pennsylvania Greyhound Lines, Inc., or to any other labor organization of their employees, including the employees of the Pennsylvania Greyhound system, except that nothing in this paragraph shall prohibit the respondents from permitting their employees to confer with them during working hours without loss of time or pay (p. 51).<sup>2</sup>

Although the Board has issued a general cease and desist order similar to the one above quoted in all cases involving violations of section 8, subdivision (2), of the act, it has in some of these cases made an additional order, requiring the employer to cease and desist from engaging in certain activities and conduct, specifically setting forth therein in detail such conduct and activities.<sup>3</sup>

Discussion of orders requiring affirmative action in cases involving a violation of section 8, subdivision (2), of the act, will be found in a later section.<sup>4</sup>

3. *Cease and desist orders in cases where the Board has found that an employer has engaged in unfair labor practices within the meaning of section 8, subdivisions (3), or (4), of the act.*—Cease and desist orders in this type of cases have also been uniformly modeled along the lines of the general order issued by the Board in *Matter of Pennsylvania Greyhound Lines, Inc.*<sup>5</sup> In that case the Board found that the respondents had discriminated against their employees within the meaning of section 8, subdivision (3), of the act, and thereupon issued an order requiring the respondents to

<sup>1</sup> 1 N. L. R. B. 1.

<sup>2</sup> Similar cease and desist orders were issued by the Board in the following cases involving violations of sec. 8, subdivision (2), of the act: *Matter of Canvas Glove Manufacturing Works, Inc.*, and *International Glove Workers Union, Local No. 88*, 1 N. L. R. B. 519; *Matter of Wheeling Steel Corporation and the Amalgamated Association of Iron, Steel and Tin Workers of North America, N. R. A. Lodge, No. 155, Goodwill Lodge No. 157, Rod & Wire Lodge, No. 153, Golden Rule Lodge, No. 161, Service Lodge, No. 163*, 1 N. L. R. B. 699; *Matter of Oregon Worsteds Company, a Corporation, and United Textile Workers of America, Local 2455*, 1 N. L. R. B. 915; *Matter of Ansin Shoe Manufacturing Company and Shoe Workers' Protective Union, Local No. 80*, 1 N. L. R. B. 929.

<sup>3</sup> See, for example, *Matter of Clinton Cotton Mills and Local No. 2182, United Textile Workers of America*, 1 N. L. R. B., 97, where the Board ordered the Clinton Cotton Mills to cease "and desist (a) from permitting its overseers \* \* \* and other supervisory officials to remain or become members of the Clinton Friendship Association, to participate in its activities and to solicit membership in it," and "(b) from affording the Clinton Friendship Association the privileges of having its dues collected by the respondent (Clinton Cotton Mills) from the wages of its members and of soliciting for members during working hours and on mill property unless similar privileges are offered to Local Union No. 2182, United Textile Workers of America and any other labor organization of its employees (pp. 120-1); and *Matter of Atlas Bag and Burlap Company, Inc., and Milton Rosenberg, Organizer, Burlap & Cotton Bag Workers Local Union No. 2469 Affiliated with United Textile Workers Union*, 1 N. L. R. B. 292, where the Board ordered the Atlas Bag & Burlap Co., Inc., to cease and desist "from in any manner soliciting or encouraging membership in such organizations (company unions) and from dealing with or recognizing such organizations as representing its employees and from continuing the existence of such organizations" (p. 306).

<sup>4</sup> See p. 127, *infra*.

<sup>5</sup> 1 N. L. R. B. 1.

"cease and desist from discouraging membership in Division No. 1063 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, or any other labor organization of their employees, including the employees of the Pennsylvania Greyhound system, by discrimination in regard to hire or tenure of employment or any term or condition of employment" (p. 51).<sup>1</sup> Cease and desist orders issued by the Board in cases involving violations of section 8, subdivision (3), of the act, although of the same general tenor, have varied widely in language. In a great many cases the cease and desist orders of the Board were very specific as to the type of discrimination.<sup>2</sup> These latter orders although specifically worded, were in nearly all of the cases accompanied by general phraseology requiring the employer to cease and desist from engaging in any other form or manner of discrimination to encourage or discourage membership in any labor organization.

The Board has had to deal with a violation of section 8, subdivision (4), of the act, in only one case. In *Matter of Friedman-Harry Marks Clothing Company, Inc., and Amalgamated Clothing Workers of America*,<sup>3</sup> the Board found that the Friedman-Harry Marks Clothing Co., Inc., had discharged an employee for having filed charges under the act. The Board's cease and desist order in that case simply required the Friedman-Harry Marks Clothing Co., Inc., to cease and desist "from discharging or otherwise discriminating against any of its employees for filing charges or giving testimony under the National Labor Relations Act" (p. 431).

In another case, *Matter of Baer Co., Inc., and United Textile Workers of America*,<sup>4</sup> in which no violation of section 8, subdivision (4), was involved, the Board issued an order requiring the Baer Co., Inc., to "cease and desist \* \* \* from any conduct inconsistent with compliance with the requirements of section 8, subdivisions (1), (2), (3), (4) and (5) of the National Labor Relations Act" (p. 162), in

<sup>1</sup> Similar cease and desist orders were issued by the Board in the following cases involving violations of sec. 8, subsec. (3), of the act: *Matter of United Aircraft Manufacturing Corporation and Industrial Aircraft Lodge No. 119, Machine Tool and Foundry Workers Union*, 1 N. L. R. B. 236; *Matter of Fashion Piece Dye Works, Inc., a Corporation, and Federation of Silk and Rayon Dyers and Finishers of America*, 1 N. L. R. B. 285; *Matter of Timken Silent Automatic Company, a Corporation, and Earl P. Ormsbee, Chairman, Executive Board, Oil Burner Mechanics Association*, 1 N. L. R. B. 335; *Matter of The Associated Press and American Newspaper Guild*, 1 N. L. R. B. 788.

<sup>2</sup> See, for example, *Matter of Clinton Cotton Mills and Local No. 2182, United Textile Workers of America*, 1 N. L. R. B. 97, where the Board ordered the Clinton Cotton Mills to "cease and desist (a) from requiring as a condition of employment in its mill that the employee or applicant for employment become a member of the Clinton Friendship Association (company dominated union) or sign a power of attorney or other document authorizing the Clinton Friendship Association to represent him for the purpose of collective bargaining or grant any other authorization to the Clinton Friendship Association \* \* \*" (p. 120); *Matter of Radiant Mills Company, a Corporation, and J. R. Scarbrough and George Spisak*, 1 N. L. R. B. 274, where the Board ordered the Radiant Mills Co. to "cease and desist (a) from discharging or threatening to discharge any of its employees for the reason that such employees have joined or assisted American Federation of Hosiery Workers, Local No. 114. \* \* \*" (p. 283-4); *Matter of Atlas Bag and Burlap Company, Inc., and Milton Rosenberg, Organizer, Burlap & Cotton Bag Workers, Local Union No. 2469, Affiliated with United Textile Workers Union*, 1 N. L. R. B. 292, where the Board ordered the Atlas Bag & Burlap Co., Inc., "to cease and desist from \* \* \* in any manner \* \* \* offering, soliciting, entering into or continuing or enforcing or attempting to enforce an individual anti-union contract of employment with its employees \* \* \*" (pp. 306-7); and *Matter of Anwelt Shoe Manufacturing Company and Shoe Workers Protective Union, Local No. 80*, 1 N. L. R. B. 939, where the Board ordered the Anwelt Shoe Manufacturing Co. to cease and desist "from discouraging membership in the Shoe Workers' Protective Union, or any other labor organization of its employees, by discharging, threatening to discharge, or refusing to reinstate any of its employees for joining or assisting the Shoe Workers' Protective Union or any other labor organization of its employees" (p. 948).

<sup>3</sup> 1 N. L. R. B. 411.

<sup>4</sup> 1 N. L. R. B. 159.

accordance with the terms of a stipulation agreed upon between the Baer Co., Inc., and the Board, at the hearing in that case.

Discussion of orders requiring affirmative action in these cases will be found in a later section.<sup>1</sup>

4. *Cease and desist orders in cases where the Board has found that an employer has engaged in unfair labor practices within the meaning of section 8, subdivision (5), of the act.*—Cease and desist orders in cases involving refusals to bargain collectively have been very simple in nature and fairly uniform in language. In *Matter of Columbian Enameling & Stamping Co. and Enameling & Stamping Mill Employees Union, No. 19694*,<sup>2</sup> the Board ordered the Columbian Enameling & Stamping Co. to—

cease and desist from refusing to bargain collectively with Enameling & Stamping Mill Employees Union, No. 19694, as the exclusive representative of the production employees employed by the respondent in respect to rates of pay, wages, hours of employment, and other conditions of employment (p. 200).

Similar orders have been issued in all of the other cases involving refusals to bargain collectively.<sup>3</sup>

Orders requiring affirmative action in cases involving a refusal to bargain collectively will be discussed in a later section.<sup>4</sup>

(b) *Orders requiring employers to take affirmative action which will effectuate the policies of the act*

In addition to the cease-and-desist orders above described, section 10, subdivision (c), of the act set forth in part above, empowers the Board to issue against an employer found to be engaging in unfair labor practices within the meaning of the provisions of section 8 of the act, an order requiring such employer to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of the act. In the exercise of this power the Board has issued orders requiring affirmative action in all cases in which it has deemed such orders advisable and necessary to effectuate the policies of the act. An examination of these orders shows the adoption by the Board of a fairly uniform and consistent policy with respect to certain types of unfair labor practices set forth in section 8 of the act. This development of a practically uniform policy with respect to these orders requiring affirmative action will be made evident by the discussion of such orders in cases involving violations of section 8, subdivisions (2), (3) and (5), of the act. Although the Board has found it necessary to issue a specific affirmative order in only two cases involving a violation of section 8, subdivision (1), of the act,<sup>5</sup> and in only one case involving a violation

<sup>1</sup> See p. 128, *infra*.

<sup>2</sup> 1 N. L. R. B. 181.

<sup>3</sup> See, for example, *Matter of Delaware-New Jersey Ferry Co. and Marine Engineers' Beneficial Association No. 13*, 1 N. L. R. B. 85; *Matter of M. H. Birge & Sons Company and United Wall Paper Crafts of North America*, 1 N. L. R. B. 731; and *Matter of Columbia Radiator Company and International Brotherhood of Foundry Employees, Local No. 79*, 1 N. L. R. B. 847.

<sup>4</sup> See p. 133, *infra*.

<sup>5</sup> The Board has, however, in a great number of cases involving a violation of sec. 8, subdivision (1) of the act, issued a general affirmative order requiring the employer to post notices to his employees, stating that he will cease and desist from engaging in conduct and activities inconsistent with a compliance with the provisions of that section and stating further that such notices will remain posted for 30 consecutive days from the date of posting. See, for example, *Matter of Fruehauf Trailer Company and United Automobile Workers Federal Union No. 19375*, 1 N. L. R. B. 68, and *Matter of the Associated Press and American Newspaper Guild*, 1 N. L. R. B. 788.

of section 8, subdivision (4), of the act, and since in consequence no policy deduction can be made with respect to such cases, such affirmative orders will nevertheless be discussed hereinafter, along with the orders requiring affirmative action issued by the Board in cases involving violations of section 8, subdivisions (2), (3) and (5) of the act, partly for the reason that such orders throw light upon the possible character of orders in future cases involving the same and similar problems, and partly for the purpose of setting forth the matter of orders requiring affirmative action in all types of unfair labor practices in one compact whole.

1. *Orders requiring affirmative action in cases where the Board has found that an employer has engaged in unfair labor practices within the meaning of section 8, subdivision (1), of the act.*—In *Matter of Atlanta Woolen Mills and Local No. 2307, United Textile Workers of America*,<sup>1</sup> the Board found that the evidence before it with respect to domination of and interference with the formation and administration of a labor organization, known as the Good Will Club, was not sufficient to warrant it in finding that the Atlanta Woolen Mills had violated section 8, subdivision (2), of the act. The Board did, however, find that that evidence warranted a finding that the Atlanta Woolen Mills had violated section 8, subdivision (1), of the act. This evidence was to the effect that the officers, overseers, and foremen of Atlanta Woolen Mills had, at least tacitly, encouraged membership in the Good Will Club, and that the Atlanta Woolen Mills had failed to deny the existence of a closed-shop agreement between it and the Good Will Club after the latter organization had, without authorization, published a notice on the bulletin boards in the mill to the effect that such a closed-shop agreement had been entered into. On the basis of this evidence, the Board found that Atlanta Woolen Mills had engaged in unfair labor practices within the meaning of section 8, subdivision (1), of the act. A general order requiring the Atlanta Woolen Mills to cease and desist from such conduct would not have fully effectuated the policies of the act, in that it would not have adequately dispelled the subtle coercion involved in the employer's failure to deny the existence of a closed-shop agreement with the Good Will Club. Consequently, the Board ordered the Atlanta Woolen Mills, in addition, to post notices in conspicuous places about its plant, stating that it would cease and desist as ordered, and stating further that no closed-shop agreement was in effect between it and the Good Will Club.

However, after reconsidering its order, upon the union's petition for modification and for an order disestablishing the Good Will Club as a representative for the purposes of collective bargaining with the Atlanta Woolen Mills, the Board issued a supplementary decision,<sup>2</sup> modifying its previous order. In speaking of the earlier order, the Board stated:

We now believe that this order did not go far enough on the facts as found. It merely requires the respondent to make an announcement that there is no closed-shop agreement with the Good Will Club. However, we found that if it had not been for the affirmative acts of the respondent's officers and the respondent's failure to act with respect to the closed-shop notices on the bulletin boards, the Good Will Club would not have succeeded in enlisting the membership of

<sup>1</sup> 1 N. L. R. B. 316.

<sup>2</sup> *Matter of Atlanta Woolen Mills and Local No. 2307, United Textile Workers of America, Supplementary Decision and Modification of Order*, 1 N. L. R. B. 328.

most of the employees. The only effective remedy which will restore the situation as it existed before the respondent interfered with the self-organization of its employees is to require the disestablishment of the Good Will Club. We feel that in going this far we are doing no injustice to the respondent, inasmuch as it is clear on the evidence, and we have so found, that before the respondent had interfered in the manner set forth, the Good Will Club led merely a formal existence. If we were right in concluding on the evidence that the club was feeble and insignificant as an organization representing the employees before the respondent gave it life, we feel that we are justified in requiring such action as will render the club as ineffective as it had previously been. We do not believe that the posting of a notice stating no more than that there is no closed-shop agreement can achieve this result (p. 332).

With respect to its power to issue an order disestablishing the Good Will Club as a bargaining agency in the absence of a finding that section 8, subdivision (2), had been violated by the Atlanta Woolen Mills, the Board stated:

In basing an order that the club be disestablished as a bargaining agency on a conclusion that section 8, subdivision (1), of the act has been violated, and not, as is normally the case, on a conclusion that section 8, subdivision (2), has been violated, we are not exceeding the power granted to the Board in section 10, subdivision (c), of the act, wherein the Board is empowered to require the taking of "such affirmative action as will effectuate the policies of this act." It is clear from this provision that in order to require the disestablishment of a labor organization as a bargaining agency, it is not essential that the Board conclude that an employer has violated section 8, subdivision (2), with respect to it. We construe section 10, subdivision (c), as empowering the Board to require the taking of such affirmative action as will provide an appropriate and effective remedy for any violations of any subdivision of section 8 (p. 332-3).

The Board then ordered the Atlanta Woolen Mills to "withdraw all recognition from the Good Will Club as the representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of work" (p. 334), and to post notices in conspicuous places in its mill stating that the Good Will Club is so disestablished and that it would refrain from any recognition thereof. In all other respects the modified order was identical to the original order of March 11, 1936.

In *Matter of Brown Shoe Company, Inc., a New York corporation, and Boot and Shoe Workers' Union Local No. 655*,<sup>1</sup> the Board having found that the Brown Shoe Co.'s arbitrary termination of a seniority agreement with the union in violation of section 8, subdivision (1), of the act, was responsible for the strike at its plant on October 14, 1935, issued an order requiring the Brown Shoe Co., Inc., to take the following affirmative action: (a) Offer reinstatement to its employees who went out on strike on October 14, 1935, in all cases in which it had since October 14, 1935, employed others to do the work of such employees, and in all other cases place such employees on a list to be offered employment, in order of their seniority, as and when their services are needed; (b) upon request, enter into negotiations with Local No. 655 for the purpose of collective bargaining in respect to the seniority arrangement in effect at the Salem plant (of the Brown Shoe Co.) until September 1935. Such affirmative action was required in order to restore the status quo which existed before the strike, which was caused by the unfair labor practices of

<sup>1</sup> 1 N. L. R. B. 803.



the Brown Shoe Co., Inc. The reason for such order is fully set forth in the decision in this case under the heading "Remedy."

The strike at the Salem plant on October 14 was caused by the respondent's conduct in arbitrarily terminating the seniority agreement with the union and by other anti-union conduct for which we have found it to be responsible. Moreover, we have found that the violent breaking of the picket line on the day of the strike was caused by the respondent, this conduct amounting to interference, restraint, and coercion of its employees in the exercise of their right to concerted activities for mutual aid and protection. An order requiring the respondent to cease and desist from such conduct will not wholly restore the union to at least the position it occupied in the Salem plant on the day of the strike. We shall, therefore, in order to restore the status quo, order the respondent to offer reinstatement to these employees at the Salem plant who went out on strike on October 14, and to that end, if necessary, to displace employees hired since October 14 to take the places of strikers. In order to restore the status quo, we shall also order the respondent to enter into negotiations with the union with the object of reaching an agreement in regard to the seniority arrangement which the respondent arbitrarily abrogated in violation of its employees' rights to collective bargaining in respect to conditions of employment \* \* \* (p. 834).

2. *Orders requiring affirmative action in cases where the Board has found that an employer has engaged in unfair labor practices within the meaning of section 8, subdivision (2), of the act.*—In cases in which the Board has found violations of section 8, subdivision (2), of the act, it has issued orders requiring the employer to withdraw all recognition from the "company dominated", "company controlled" or "company supported" union, as the representative of his employees for the purposes of collective bargaining.<sup>1</sup> In nearly all of the cases where such an order has been issued the Board has ordered in addition that the employer post notices in conspicuous places about his plant or mill, stating that the "company dominated", "company controlled", or "company supported" union is disestablished as the representative of his employees for the purposes of collective bargaining, and that he will refrain from any recognition thereof, and stating further that such notices will remain posted for at least 30 consecutive days from the date of posting.<sup>2</sup>

In *Matter of Atlas Bag and Burlap Company, Inc. and Milton Rosenberg, Organizer, Burlap & Cotton Bag Workers Local Union No. 2469, Affiliated with United Textile Workers Union*,<sup>3</sup> the Board ordered the Atlas Bag & Burlap Co., Inc., to—

personally inform in writing the officers of the "Atlas Bag & Burlap Co. Employees' Union" and the members of the "Collective Bargaining Committee of the Atlas Bag & Burlap Co." that these organizations have been formed and administered in violation of the National Labor Relations Act \* \* \*, and that the respondent will not in any manner deal with or recognize such organizations, and that they shall be dissolved and cease to exist (p. 307).

The reason for ordering the disestablishment of a labor organization as a collective bargaining agency, where such organization is

<sup>1</sup> See, for example, *Matter of Pennsylvania Greyhound Lines, Inc.*, 1 N. L. R. B. 1, and *Matter of Oregon Worsteds Company, a Corporation, and United Textile Workers of America*, 1 N. L. R. B. 915. However, in *Matter of Canvas Glove Manufacturing Works, Inc., and International Glove Makers Union, Local No. 83*, 1 N. L. R. B. 519, where the Board found that an employer had violated section 8, subsection (2), in that he had made a determined effort to initiate a labor organization, but where such labor organization never came into existence, no such order requiring a withdrawal of recognition was made.

<sup>2</sup> See, for example, *Matter of Clinton Cotton Mills and Local No. 2182, United Textile Workers of America*, 1 N. L. R. B. 97; *Matter of Oregon Worsteds Company, a Corporation, and United Textile Workers of America*, 1 N. L. R. B. 915; and *Matter of Ansin Shoe Manufacturing Company and Shoe Workers' Protective Union, Local No. 80*, 1 N. L. R. B. 929.

<sup>3</sup> 1 N. L. R. B. 292.

found to be "company controlled", "company dominated", or "company supported", is succinctly set forth by the Board in its decision in *Matter of Wheeling Steel Corporation and The Amalgamated Association of Iron, Steel, and Tin Workers of North America, N. R. A. Lodge, No. 155, Goodwill Lodge, No. 157, Rod & Wire Lodge, No. 158, Golden Rule Lodge, No. 161, Service Lodge, No. 163.*<sup>1</sup> In that case the Board stated:

Simply to order the respondent to cease supporting and interfering with the councils would not set free the employee's impulse to seek the organization which would most effectively represent him. We cannot completely eliminate the force which the respondent's power exerts upon the employee. But the councils will, if permitted to continue as representatives, provide the respondent with a device by which its power may now be made effective unobtrusively, almost without further action on its part. Even though he would not have freely chosen the council as an initial proposition, the employee, once having chosen, may by force of a timorous habit, be held firmly to his choice. The employee must be released from these compulsions. Consequently the respondent must affirmatively withdraw recognition from the departmental and general councils, as organizations, for the purpose of collective bargaining upon behalf of its employees (p. 710).<sup>2</sup>

3. *Orders requiring affirmative action in cases where the Board has found that an employer has engaged in unfair labor practices within the meaning of section 8, subdivisions (3), or (4), of the act.*—In all but two cases<sup>3</sup> involving discriminatory discharges, discriminatory refusals to employ or reinstate, or discriminatory demotions in violation of section 8, subdivision (3), of the act, the Board has ordered the employer to offer reinstatement to the employee discriminated against and to make whole such employee for any loss of pay that he has suffered by reason of the discrimination.<sup>4</sup>

The orders requiring the employer to offer reinstatement to the employee discriminated against have further required that such offer of reinstatement be made with respect to the former position held by such employee and that it be without prejudice to any seniority rights or other rights and privileges previously enjoyed by him.<sup>5</sup> However, in one case, *Matter of Oregon Worsted Company, a Corporation and United Textile Workers of America, Local 2435*,<sup>6</sup> where reinstatement of the discharged employee to his former position could not be ordered because the work which he formerly performed had greatly diminished, and had been divided up among a number of girls who also performed other tasks, the Board ordered the respondent to offer to such discharged employee reinstatement to a position substantially equivalent in wages and in type

<sup>1</sup> 1 N. L. R. B. 699.

<sup>2</sup> Similar language was used by the Board in disestablishing labor organizations as collective bargaining agencies in the following cases: *Matter of Oregon Worsted Company, a Corporation, and United Textile Workers of America, Local 2435*, 1 N. L. R. B. 915; *Matter of Ansin Shoe Manufacturing Company and Shoe Workers' Protective Union, Local No. 80*, 1 N. L. R. B. 929.

<sup>3</sup> In these two cases, namely, *Matter of Isador Panitz, doing business under the trade name and style of Yale Underwear Company and Amalgamated Clothing Workers of America, Local No. 127*, 1 N. L. R. B. 539, and *Matter of Greensboro Lumber Company and Lumber and Sawmill Workers' Local Union No. 2688, United Brotherhood of Carpenters and Joiners of America*, 1 N. L. R. B. 629, no back pay was ordered under the circumstances of the cases.

<sup>4</sup> See, for example, *Matter of Clinton Cotton Mills and Local No. 2182, United Textile Workers of America*, 1 N. L. R. B. 97, and *Matter of Washington, Virginia, and Maryland Coach Company, a Corporation, and Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America, Local Division No. 1079*, et al., 1 N. L. R. B. 769.

<sup>5</sup> See, for example, *Matter of Mackay Radio & Telegraph Company, a Corporation, and American Radio Telegraphists' Association, San Francisco Local No. 3*, 1 N. L. R. B. 201, and *Matter of National New York Packing & Shipping Company, Inc., and Ladies' Apparel Shipping Clerks Union, Local No. 19953*, 1 N. L. R. B. 1009.

<sup>6</sup> 1 N. L. R. B. 915.

of work, to the position which he formerly held. This order was motivated in part by the finding that the discharged employee had been hired in the original instance as an inexperienced worker, that he learned his work well and that he was complimented by his foreman on the thoroughness of his sheets. Under such circumstances the Board concluded that—

In all likelihood \* \* \* it will not be difficult for him to adapt himself to new work (p. 926).

Orders requiring the payment of back pay to employees who have been discriminated against and who have suffered a loss in consequence of such discrimination, have further required that such back pay be figured, in cases of discriminatory discharge,<sup>1</sup> from the date of discharge, to the date of the offer of reinstatement, in cases of discriminatory refusal to employ or reinstate,<sup>2</sup> from the date of the refusal to the date of the offer of reinstatement, and in all other cases from the date when the discrimination first caused a loss to the date of the offer of reinstatement. The Board has generally ordered that back pay be computed at the normal rate of pay received by the employee at the time of his discharge or lay-off.<sup>3</sup> Under circumstances where the application of this principle was difficult or impossible, the Board has applied other rules.<sup>4</sup>

Although the Board's back-pay orders in cases involving discrimination require that the employee "be made whole for any loss he has suffered as a result of the discrimination" they have in all cases also required that such loss be computed by deducting the amounts earned by such employee on other jobs during the period involved.<sup>5</sup> However, in several cases the Board ordered that no deductions were to be made. For example in *Matter of Anwelt Shoe Manufacturing Company and Shoe Workers' Protective Union, Local No. 80*,<sup>6</sup> the Board ordered that no deductions be made from the back-pay for—

amounts earned by such an employee at occupations in which he had simultaneously and regularly engaged while employed by respondent and in which he continued to engage after the unlawful discharge or lay-off (p. 949).

Again in *Matter of Pusey, Maynes & Breish Company and Amalgamated Meat Cutters and Butcher Workmen of North America*,

<sup>1</sup> See, for example, *Matter of The Associated Press and American Newspaper Guild*, 1 N. L. R. B. 788.

<sup>2</sup> See, for example, *Matter of Clinton Cotton Mills and Local No. 2182, United Textile Workers of America*, 1 N. L. R. B. 97. However, in *Matter of National Casket Company, Inc., and Casket Makers Union 19559*, 1 N. L. R. B. 963, where the discriminatory conduct involved a refusal to reinstate employees who had been discharged in 1934, the Board ordered back pay in the case of each employee from the date after the refusal to reinstate on which another person was hired to do the work formerly done by him, to the date of the offer of reinstatement.

<sup>3</sup> See, for example, *Matter of Rollway Bearing Company, Inc., and Federal Labor Union 18482*, 1 N. L. R. B. 651, and *Matter of Brown Shoe Company, Inc.*, 1 N. L. R. B. 803.

<sup>4</sup> See, for example, *Matter of Canvas Glove Manufacturing Works, Inc., and International Glove Makers Union, Local No. 88*, 1 N. L. R. B. 519, where the Board ordered the back pay to be computed at the rate obtained by averaging the wages earned by employees engaged in the same operations during the period involved; *Matter of Fashion Piece Dye Works, Inc., a Corporation and Federation of Silk and Rayon Dyers and Finishers of America*, 1 N. L. R. B. 285, where back pay was ordered to be computed on the basis of the standard hourly wage of 45 cents; *Matter of General Industries Co., a Corporation, and Hobart Flenner et al.*, 1 N. L. R. B. 675, where back pay was ordered to be computed at the rate obtained by averaging the wages received by each discharged employee for the period of 15 weeks immediately preceding his discharge; and *Matter of Segal-Maigen, Inc., a Corporation and International Ladies Garment Workers' Union, Local No. 50*, 1 N. L. R. B. 749, where back pay was ordered to be computed in the case of each discharged employee on the basis of the rate received by the person who was hired in his place.

<sup>5</sup> See for example, *Matter of National Casket Company, Inc., and Casket Makers Union*, No. 19559, 1 N. L. R. B. 963, and *Matter of The Associated Press and American Newspaper Guild*, 1 N. L. R. B. 788.

<sup>6</sup> 1 N. L. R. B. 939.

*Local No. 195*,<sup>1</sup> where the employee had earned about \$5 per week as a musician both before and after the discharge, the Board ordered that no deductions be made from the back pay for such earnings unless they were earned by him during the hours he would have worked for his employer had he not been discharged.

In several cases involving discriminatory discharges the Board has accompanied its back-pay order with the further direction that all disputes as to the amount of such back pay be laid before it for determination in accordance with its order.<sup>2</sup>

Where a trial examiner has found in his intermediate report that the employer has not violated section 8, subdivision (3), of the act, and the Board has reversed the finding of the trial examiner, the Board has consistently refused to order back pay for the period between the date of service of the intermediate report and the date of its decision.<sup>3</sup> The reason for this rule is set forth by the Board in its decision in *Matter of E. R. Haffelfinger Co., Inc., and United Wall Paper Crafts of North America, Local No. 6*:<sup>4</sup>

In order to undo, so far as possible, the harm resulting from the unfair labor practices, we are ordering respondent to reinstate the eight discharged employees. Normally, we would also order back pay from the date of discharge to the time of respondent's offer of reinstatement. We believe, however, that in view of the trial examiner's recommendations, respondent could not have been expected to reinstate the discharged men after it received the intermediate report (Jan. 17, 1936), and therefore it should not be required to pay back from that time to the date of this decision (p. 767).

In *Matter of Timken Silent Automatic Company, a Corporation, and Earl B. Ormsbee, Chairman, Executive Board, Oil Burner Mechanics Association*,<sup>5</sup> and in *Matter of Segall-Maigen, Inc., a Corporation, and International Ladies Garment Workers' Union, Local No. 50*,<sup>6</sup> the Board issued more restricted orders with respect to reinstatement and back pay of employees discriminated against. In the first of these cases, which involved a discriminatory refusal to reemploy after a strike, the Board ordered the Timken Silent Automatic Co. to offer employment on the basis of seniority to the employees discriminated against to the extent that work for which they were available was being performed by new persons employed since the date of the strike, to place those for whom employment was not available on a preferred list to be given employment on the basis of seniority as and when their services were needed, and to make whole (just) such of the employees who receive employment by payment of back pay from the date of the refusal to reemploy, to the date of the offer of reinstatement. With respect to the remedy granted in that case, the Board stated in its decision:

There are 18 men who have suffered discrimination. These men are not at work now because of two reasons. First, the respondent's wrongful refusal to bargain caused them to strike. During that strike men were employed in their place. Second, after the settlement of the strike, the respondent has

<sup>1</sup> 1 N. L. R. B. 482.

<sup>2</sup> See, for example, *Matter of Bell Oil and Gas Company and Local Union 258 of The International Association of Oil Field, Gas Well, and Refinery Workers of America*, 1 N. L. R. B. 562, and *Matter of United Aircraft Manufacturing Corporation and Industrial Aircraft, Lodge No. 119 Machine, Tool, and Foundry Workers' Union*, 1 N. L. R. B. 236.

<sup>3</sup> See, for example, *Matter of Mann Edge Tool Company and Federal Labor Union 1879*, 1 N. L. R. B. 977, and *Matter of Brown Shoe Company, Inc.*, 1 N. L. R. B. 803.

<sup>4</sup> 1 N. L. R. B. 760.

<sup>5</sup> 1 N. L. R. B. 835.

<sup>6</sup> 1 N. L. R. B. 749.

further filled with new men jobs for which the men in question were available. These men, or some part of them, are thus out of work as a consequence of the respondent's wrongful act in refusing to bargain and as a result, further, of its discrimination in reinstating the strikers. If the damage occasioned by respondent's failure to bargain is to be repaired, if the discrimination is to cease, and if the resulting interference with the organizational activity of the employees is to be removed, the men who have thus been illegally supplanted must be returned to work, even though men hired since September 24 (apart from strikers) should have to be displaced. A number of the men to be reinstated have performed more than one type of work for the respondent. Ormsbee, for example, has done installation service work and inspection. Ormsbee's availability is, apparently, not limited to the last job he held. Insofar, therefore, as it was customary to regard a man as available for more than one job, that fact shall be taken into consideration in determining whether a new man is now filling a job for which an old man is available. Assuming that on this basis there are fewer jobs than there are available men, the men will receive preference according to their seniority, except that a man who was actually employed at the time of the strike in the job to be filled shall be preferred to one who was not so employed. It is possible that the respondent does not observe seniority rules in its business. We believe, however, that the form of the relief is necessary to accomplish the policies of the act. Certain of the 18 men in question were more prominent in union activity than others. If we permit the respondent to choose among them, discrimination, though within a narrower range, may be continued. Seniority is *prima facie* a relevant criterion of fitness, so that, as at present advised, we believe the application of that rule would operate fairly. Those of the 18 men who cannot be offered jobs should be placed on a preferred list to await vacancies as they arise, and to be employed according to the seniority rule here laid down (p. 345-6).

In the second of these cases, involving a discriminatory refusal to reinstate after a walk-out, the Board issued an order against Segall-Maigen, Inc., similar to one issued against the Timken Silent Automatic Co. There the Board ordered Segall-Maigen, Inc., to offer employment on the basis of seniority to the employees discriminated against to the extent that work for which they were available was being performed by new persons engaged after the walk-out or by employees with less seniority as of the day of the walk-out; to place those for whom employment was not available on a preferred list, prepared on the basis of seniority, to be offered employment as it arises, and to make whole with back pay (just) such employees who receive employment.

In several cases involving discriminatory discharges such discharges were followed by a strike. At the time of the hearings in these cases the strikers, as well as the discharged employees, had not obtained regular or substantially equivalent employment elsewhere. In considering these cases the Board realized that the policies of the act would not be fully effectuated by ordering the reinstatement of the discharged employees alone with back pay. It felt that the policies of the act could only be fully effectuated by also placing the striking employees in the same position in which they were before the alleged discrimination took place. In *Matter of Canvas Glove Manufacturing Works, Inc., and International Glove Makers Union, Local No. 88*,<sup>1</sup> 42 employee members of the union walked out on October 21, 1935, following the discriminatory discharge of one of their fellow members. As to these 42 employees, the Board ordered that they be offered employment to the extent that work for which they were available was being performed by persons employed since the date of the walk-out and to place those for whom employment

<sup>1</sup> 1 N. L. R. B. 519.

was not available on a preferred list, to be offered employment as and when it arose. With respect to the remedy to be granted in this case, the Board in its decision stated:

\* \* \* 42 union workers have suffered by reason of the respondent's interference with the rights of its employees as guaranteed in section 7 of the act and by its discrimination in regard to hire or tenure of employment. Those union workers who have not obtained employment elsewhere are out of work as a consequence of the respondent's wrongful acts. If they are to be put in status quo, and if the interference with the union activities is to cease, the union workers who went out on strike must be returned to work, even though it may mean that workers hired subsequent to October 21 shall have to be displaced. If all of the Union workers cannot be put back to work at one time, then those not so put back to work shall be placed on a preferred list to await jobs as they arise. All union workers should be put back to work in accordance with their seniority status with the respondent, as shown by its records (p. 527-8).<sup>1</sup>

The Board has in numerous cases involving violations of section 8, subdivision (3), of the act, as it has in many cases involving other violations of section 8 of the act, ordered the posting of notices stating that the employer would cease and desist from engaging in the discriminatory conduct toward his employees and that such notices would remain posted for a period of 30 consecutive days from the date of posting.<sup>2</sup> In one case, *Matter of Clinton Cotton Mills and Local 2182, United Textile Workers of America*,<sup>3</sup> involving a discriminatory refusal to reemploy as well as other unfair labor practices, the Board ordered the Clinton Cotton Mills to file a report with it within 10 days setting forth therein the fact that it had ceased and desisted as ordered, in addition to ordering the posting of the notices above mentioned.

In *Matter of Atlas Bag and Burlap Company, Inc.*,<sup>4</sup> the Board found that the Atlas Bag & Burlap Co., Inc., was engaging in unfair labor practices within the meaning of section 8, subdivision (3), of the act, by requiring its employees to sign individual anti-union or "yellow dog" contracts as a condition of employment. In addition to ordering that company to cease and desist from so doing, the Board further ordered it to—

personally inform in writing each and every one of its employees who has entered into the individual anti-union contract of employment \* \* \* that such contract constitutes a violation of the National Labor Relations Act and that the respondent is, therefore, obliged to discontinue such contract as a term or condition of employment and to desist from in any manner to enforce or attempt to enforce such contract (p. 307).

and to post notices stating that—

the individual anti-union contracts of employment entered into between the respondent and some of its employees are in violation of the National Labor Relations Act and that the respondent will no longer offer, solicit, enter into,

<sup>1</sup> Reinstatement was similarly ordered for employees who went on strike in consequence of discriminatory discharges in the following cases: *Matter of Benjamin Fainblott and Marjorie Fainblott, Individuals, Doing Business Under the Firm Names and Styles of Somerville Manufacturing Company and Somerset Manufacturing Company*, and *International Ladies Garment Workers Union, Local No. 149*, 1 N. L. R. B. 864; *Matter of Foster Brothers Manufacturing Company, Inc., and Federal Labor Union, Local No. 20137*, 1 N. L. R. B. 880; *Matter of Cleveland Chair Company and Local No. 1759, United Brotherhood of Carpenters and Joiners of America*, 1 N. L. R. B. 892.

<sup>2</sup> See, for example, *Matter of Vegetable Oil Products Company, Inc., a Corporation, and Soap and Edible Oil Workers Union, Local No. 18409*, 1 N. L. R. B. 989; *Matter of Wheeling Steel Corporation*, 1 N. L. R. B. 699.

<sup>3</sup> 1 N. L. R. B. 97.

<sup>4</sup> 1 N. L. R. B. 292.

continue, enforce, or attempt to enforce, such contracts with its employees (p. 308).

In the only case in which the Board has found a violation of section 8, subdivision (4), of the act, *Matter of Friedman-Harry Marks Clothing Company, Inc.*,<sup>1</sup> an employee was discharged because she had filed charges under the act. The Board issued an order requiring affirmative action with respect to her similar to that required in the case of employees whose discharges fell within section 8, subdivision (3).

4. *Orders requiring affirmative action in cases where the Board has found that an employer has engaged in unfair labor practices within the meaning of section 8, subdivision (5), of the act.*—In cases where the Board has found that an employer has refused to bargain collectively with the representatives of his employees it has consistently ordered the employer to bargain collectively with such representatives upon request to do so.<sup>2</sup> Such orders have been uniform in nature and have been modeled along the lines of the order issued by the Board in *Matter of Harbor Boatbuilding Co., a Corporation, and Ship Carpenters Local Union No. 1335*.<sup>3</sup> In that case the Board ordered that the Harbor Boatbuilding Co. take the following affirmative action:

Upon request, bargain collectively with the Ship Carpenters, Caulkers, and Joiners Local No. 1335, as the exclusive representative of the carpenters, caulkers, and joiners employed in such capacity by the respondent, in respect to rates of pay, wages, hours of employment, and other conditions of employment (p. 358).

In several cases involving a refusal to bargain collectively, however, the Board also ordered the employer to bargain collectively, with the object of reaching an agreement covering rates of pay, wages, hours of employment, and other terms and conditions of employment.<sup>4</sup>

Numerous cases involving refusals to bargain collectively have also involved strikes caused or prolonged by such refusals, and in some of these cases the employer has hired strikebreakers to do the work performed by the strikers previous to the strike. In such cases a mere order requiring the employer to bargain collectively would not fully effectuate the policies of the act, since the process of bargaining could yield little comfort to those who were still unemployed as a result of the employer's illegal conduct. Therefore, the Board has in these cases consistently ordered the employer to restore the status quo existing prior to the strike or prior to the illegal conduct by reinstating his old employees who had not obtained regular, or substantially equivalent, employment elsewhere. In one of these cases, *Matter of Columbian Enameling & Stamping Co.*,<sup>5</sup> where the illegal refusal of the Columbian Enameling & Stamping Co. to bargain collectively with the representatives of its employees on July 23, 1935, prolonged a strike and prevented a settlement which might have put

<sup>1</sup> 1 N. L. R. B. 411.

<sup>2</sup> See for example, *Matter of Harbor Boatbuilding Co., a Corporation, and Ship Carpenters Local Union No. 1335*, 1 N. L. R. B. 349, and *Matter of the Canton Enameling and Stamping Company, a Corporation, and Canton Lodge No. 812, International Association of Machinists*, 1 N. L. R. B. 402.

<sup>3</sup> 1 N. L. R. B. 349.

<sup>4</sup> See, for example, *Matter of International Filter Company, a Corporation, and International Association of Machinists, District No. 8*, 1 N. L. R. B. 489, and *Matter of Atlas Bag and Burlap Company, Inc.*, 1 N. L. R. B. 292.

<sup>5</sup> 1 N. L. R. B. 181.

all of its striking employees back to work, the Board ordered the Columbian Enameling & Stamping Co. to—

discharge from its employment all production employees who were not employed by it on July 22, 1935, and reinstate to the vacancies so created individuals who were so employed and have not received substantially equivalent employment elsewhere and place the remainder of such individuals on a list to be called for reinstatement as and when their labor is needed (p. 199-200).

as well as to cease and desist from refusing to bargain collectively with the union involved after such reinstatement.<sup>1</sup> The reason for such order is stated in the Boards decision in that case, as follows:

A question arises as to the form of relief. It would be futile simply to order the respondent to bargain with the union, since the plant now has its full quota of men and the process of bargaining could yield little comfort to those who are not employed; nor do we know whether the union now represents a majority. Under these circumstances we must restore, as far as possible, the situation existing prior to the violation of the act in order that the process of collective bargaining, which was interrupted, may be continued.

It is apparent that a number of those who were on strike are still unemployed by the respondent or at substantially equivalent employment elsewhere and that, on the other hand, there are at present employed in the plant a number of individuals who were not so employed at the time of the strike on March 23, 1935.

The purpose of the conference proposed by the conciliators on July 23 was to settle the strike and to put the men back to work. It does not lie in the mouth of the respondent to say that this result would not necessarily have followed. The law imposed a duty to bargain under these circumstances because that result might have followed. It is respondent's conduct which has precluded that possibility. Therefore, we shall order the respondent to discharge from its employment all production employees who were not employed on July 22, 1935, and reinstate to the vacancies so created individuals who were so employed and have not since received substantially equivalent employment elsewhere (p. 198-9).

In cases involving a violation of section 8, subdivision (5), of the act, the Board has also ordered the employer to post notices to his employees stating that he would cease and desist as ordered and that such notices would remain posted for a period of at least 30 consecutive days from the day of posting.<sup>2</sup> In one case the Board also ordered the employer to file a report with it within 30 days of the service of the order, setting forth therein the manner in which he had complied with the Board's order.<sup>3</sup>

<sup>1</sup> Orders to the same effect were issued by the Board in the following analogous cases involving refusals to bargain collectively: *Matter of Rollway Bearing Company, Inc., and Federal Labor Union 18482*, 1 N. L. R. B. 651, where the Board ordered the Rollway Bearing Co., Inc., to offer employment to all of its employees who were employed by it on Aug. 28, 1935 (the day preceding the strike), and who had not since that date received substantially equivalent employment elsewhere, where the positions held by such employees on Aug. 28, 1935, were filled by persons who were not employees on that date and who were hired subsequent thereto, and to place the rest on a preferred list; *Matter of Rabhor Company, Inc., a Corporation, and International Ladies' Garment Workers Union*, 1 N. L. R. B. 470; *Matter of Jeffery-DeWitt Insulator Company and Local No. 455, United Brick and Clay Workers of America*, 1 N. L. R. B. 818; *Matter of S. L. Allen & Company, Incorporated, a Corporation, and Federal Labor Union, Local No. 18526*, 1 N. L. R. B. 714, where the Board ordered the S. L. Allen & Co. as follows: "To the extent that work is available and is being performed by persons employed since Jan. 13, 1936, apart from strikers, within 10 days offer employment in their former positions on the basis of seniority to its employees who went on strike on Jan. 13, 1936, dismissing if necessary persons employed since Jan. 13, 1936, and place those strikers for whom employment is not available on a preferred list \* \* \* (p. 730)"; *Matter of M. H. Birge & Sons Company and United Wall Paper Crafts of North America*, 1 N. L. R. B. 731; *Matter of Pioneer Pearl Button Company and Button Workers' Union, Federal Local 20026*, 1 N. L. R. B. 837; *Matter of Columbia Radiator Company and International Brotherhood of Foundry Employees, Local No. 79*, 1 N. L. R. B. 847.

<sup>2</sup> See, for example, *Matter of Rollway Bearing Company, Inc., and Federal Labor Union 18482*, 1 N. L. R. B. 651.

<sup>3</sup> *Matter of Columbian Enameling & Stamping Co.*, 1 N. L. R. B. 181.



### XIII. JURISDICTION

#### A. TYPES OF CASES CONSIDERED, IN GENERAL

Under the act the Board is given no detailed or specific instructions as to jurisdiction over particular employers or particular employees. The act provides generally that the Board has jurisdiction to prevent unfair labor practices "affecting commerce" (sec. 10) and to investigate questions "affecting commerce" concerning the representation of employees (sec. 9 (c)). The term "commerce" is defined in the traditional manner to include trade, traffic, commerce, transportation, or communication among the several States and foreign countries, and in the District of Columbia and the Territories (sec. 2 (6)). The term "affecting commerce" is defined in similarly broad language to mean "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce" (sec. 2 (7)).

These provisions show that the act was not intended to apply to all industry and labor, but rather that the Board's jurisdiction is coextensive with congressional power to legislate under the commerce clause of the Constitution (apart from the District of Columbia and the Territories, where congressional power is plenary).

It is scarcely open to question that the decided cases upholding congressional measures such as the Railway Labor Act, the Packers and Stockyards Act, and the Grain Futures Act, among others, likewise uphold the application of the National Labor Relations Act to situations in a current of commerce or at a "throat" through which a current flows. Thus the Board has taken jurisdiction and proceeded to decision without hesitation in cases involving interstate motor-bus transportation (*Pennsylvania Greyhound Lines, Inc.; Washington, Virginia and Maryland Coach Co.; New England Transportation Co.*), telegraph (*Mackay Radio & Telegraph Co.*), press associations (*The Associated Press*), freight agent services (*National New York Packing & Shipping Co.*), motor-truck transportation (*Protective Motor Service Co.*), and water transportation (*Delaware-New Jersey Ferry Co.; International Mercantile Marine Co.*).

At the other extreme are situations involving retail trade or other purely local business which plainly fall outside Federal power under the commerce clause. In numerous cases the Board or its regional officers have formally declined to take jurisdiction by issuance of complaints and notices of hearing, upon the ground that the situation was beyond the Board's constitutional authority, and in many other cases the filing of charges has been discouraged or the party requested to withdraw charges filed. *Infra*, p. 136. The Board has maintained that here, as under the Railway Labor Act, certain employees "would be outside the realm of Federal power only on the ground that disputes and strikes on their part would not inter-

fere with interstate commerce; and since the purpose of the act is to avoid such interference, its intention would not be in any way violated by excluding them from consideration in the administration of the act". *Virginian Railway Co. v. System Federation No. 40*, 84 F. (2d) 641, 651 (C. C. A. 4th). This accords with the obvious intention of Congress, as expressed in section 15 of the act.

Between these two extremes is a category of situations in which the Board's jurisdiction can only be determined under the circumstances of particular cases as they arise and are presented to the courts, according to the familiar process of inclusion and exclusion which has characterized judicial interpretation of all statutes predicated upon the commerce power, such as the Federal Trade Commission Act and the Sherman Anti-trust Act. The Board has considered it to be its duty to test in the courts the applicability and validity of the act in typical fact situations in this category, as well as in situations which fall clearly within Federal authority because they arise "in" commerce.

In dealing with this problem, general statements in the cases, such as that manufacturing or production is not commerce, must be considered in relation to the cases in which they appear. "Manufacturing" is, unlike mining or agriculture, an almost indefinable process. The various processes to which commodities are subjected in industry, ranging all the way from the cleaning and grading of wheat or the dyeing or printing of cloth, on the one hand, to the fundamental change from coal tar to perfume, on the other, are hardly susceptible of generalization. These processes occur either before any interstate transportation has occurred, or midway in a stream of commerce such as the Supreme Court has described, or after all interstate movement has ended, these variations again defying generalization. Even as regards so-called "production employees", labor disputes having the intent or the necessary effect of actually burdening interstate commerce are admittedly within Federal power, and unfair labor practices arising in such situations are therefore the proper subject of inquiry by the Board. Moreover, in view of numerous integrated enterprises comprising various stages of transportation as well as production, it is idle to suppose that labor disputes can be kept within the watertight compartment of "production". The inevitable consequences are that shipping, packing, receiving, transportation, and other interstate employees are presently or potentially within the threatened area of conflict.

To October 1, 1936, there were 1,551 charges and petitions brought to the attention of the Board. 1,059 of these cases had been closed on October 1, in the following manner: 498 were closed by agreement of both parties. 153 cases were dismissed by the Board and the regional directors before the issuance of a formal complaint. 343 cases were withdrawn by the parties filing them with the Board before formal action was taken by the Board. Of the 153 cases dismissed by the Board and the regional directors at least 71 were dismissed without formal action because the regional directors did not consider that the unfair labor practices affected commerce within the meaning of the act. Many of the 343 cases withdrawn before formal action by the Board were withdrawn because of advice by the regional directors that the Board would not take jurisdiction

for the same reason. It is at this stage, and before formal complaint is issued, that the great elimination of cases occurs for lack of jurisdiction; nevertheless the minutes of the Board at Washington show that in executive meeting the Board itself had occasion to refuse to issue complaints in six cases, and directed regional directors to seek withdrawals in six other cases, because of such lack of jurisdiction. In four cases trial examiners, after hearing, dismissed complaints for lack of jurisdiction and the cases were closed. The employees affected accepted the trial examiner's ruling that commerce was not affected within the meaning of the act.

Neither the regional directors nor the Board issue complaints without a rather full investigation of the facts bearing on the commerce issue.

The ultimate decision on questions of constitutional and statutory jurisdiction under this act is for the courts in each case as it arises. Decisions by the Supreme Court in a number of test cases now pending will shed light on the valid scope and application of the act, and serve as authoritative guides for the Board in its administration.

## B. UNFAIR LABOR PRACTICES AS A PRIME CAUSE OF LABOR DISPUTES

Recent statistics of the United States Department of Labor, Bureau of Labor Statistics, confirm the findings of Congress set forth in section 1 of the act. Of the 2,014 labor disputes beginning in 1935, the major issues in 952, or 47.3 percent of the total, were union recognition and other matters pertaining to the right of workers to organize. The major causes in 38.2 percent were wages and hours.<sup>1</sup> In the first 5 months of 1936, 375 disputes of a total of 784, or 47.8 percent, principally involved the issues of self-organization and collective bargaining. Only 282 of the disputes beginning in this period involved wages and hours as major issues.<sup>2</sup> These statistics indicate that while the percentage of disputes involving the right of self-organization has remained approximately constant during the past 17 months, the percentage of workers involved in such disputes increased almost 100 percent during the first 5 months of 1936, amounting now to 49.1 percent of the total.

Instances in the Board's experience, described in detail herein-after, demonstrate more graphically than cold statistics the wisdom of the Congressional findings that the unfair labor practices proscribed by the act are a prime cause of strikes and other forms of industrial unrest arising, not only over these practices themselves, but over substantive conditions of employment which might have been amicably adjusted by compliance with the procedure of collective bargaining.

In several cases it was found that peaceful relations prevailed among employers and employees so long as section 7 (a) of the NIRA was in force, but that disputes broke out upon repudiation of the principles of that section by employers after the decision of the Supreme Court in the *Schechter* case. In the *Matter of Bell Oil and Gas Company*,<sup>3</sup> In the *Matter of Rollway Bearing Co.*,<sup>4</sup>

<sup>1</sup> Monthly Labor Review, May 1936, pp. 1307-1308.

<sup>2</sup> Monthly Labor Review, May 1936, p. 1285; June 1936, p. 1572; July 1936, p. 96; August 1936, pp. 389-390; September 1936, pp. 636-637.

<sup>3</sup> 1 N. L. R. B. 562.

<sup>4</sup> 1 N. L. R. B. 651.

*In the Matter of Fruehauf Trailer Co.*<sup>1</sup> Employees, on the other hand, have shown a disposition to invoke the Board's machinery by filing a charge in lieu of resorting to the more drastic action of a strike. *In the Matter of Pennsylvania Greyhound Lines, Inc.*,<sup>2</sup> *In the Matter of Harbor Boat Building Company.*<sup>3</sup>

#### C. EFFECT OF LABOR DISPUTES ON INTERSTATE AND FOREIGN COMMERCE

The Board's decisions abound with instances of actual and threatened interruptions of interstate and foreign commerce as the result of labor disputes in various types of enterprises.

1. In the *Mackay Radio & Telegraph Co.* case<sup>4</sup> a strike of the company's San Francisco unit employees was involved. The strike was called by the union as the result of the delay provoked by the officials of the Mackay system in the negotiations for an agreement with the union's national officers. It became apparent soon after the strike began that the company had seized upon it as a convenient occasion for destroying the union. The San Francisco local was the strongest in the Mackay system. Because of its strength and active leadership it was the dominant local in the national organization. After the strike was called off, the leaders of this local were not reinstated. The Board found that the company had discriminated against these leaders and in this manner had effectively struck at the national organization.

The company is engaged in the receipt and transmission of national and international communications by telegraph, radio, and cable. Its principal office on the west coast is in San Francisco and it has other offices in Oakland, Los Angeles, and San Diego, Calif.; Portland, Ore.; Seattle and Tacoma, Wash.; Honolulu, Hawaii; and Manila, P. I. The company maintains an operating office in San Francisco and a branch office in the Stock Exchange Building. The radio and telegraph operators employed at these offices receive and transmit messages on the company's circuits which cover the west coast and extend to Honolulu, Shanghai, Tokyo, and New York. In October 1935, all of the operators employed at the San Francisco operating office went on strike, thus tying up the office almost completely. While the strike was planned and called on a Nation-wide basis to include all of the company's offices, it was not so successful in other cities. Immediately upon the calling of the strike the company concentrated its facilities in an attempt to reopen the San Francisco office. Transcontinental operations were to be continued by relaying messages through Los Angeles. The coastwise service was handled on wires leased from another company. However, radio operators were needed to maintain the trans-Pacific circuits. The company met this problem by transferring employees from the Los Angeles office. Two days after the strike began in San Francisco the company sent seven operators from New York by plane. Two more operators were taken on the plane at

<sup>1</sup> 1 N. L. R. B. 68.

<sup>2</sup> 1 N. L. R. B. 1.

<sup>3</sup> 1 N. L. R. B. 340.

<sup>4</sup> 1 N. L. R. B. 201.

Chicago. The effect that a labor dispute can have on the operations of a highly developed and complex communications system is graphically shown by the facts of this case. The day before the strike the San Francisco operating office handled 5,848 messages. On the first day of the strike, October 5, the total fell to 864. On October 6 operations were practically at a standstill—only 227 messages were handled. On October 7 the effect of the company's attempts to resume operations by using transferred operators and leased wires became noticeable as the number rose to 1,152. Early on the morning of October 8 the strike was over and on that day the office handled 4,489 messages. By October 11 operations were back to normal. There was evidence in the case, however, that the company feared that its post-strike business would drop due to the apprehension provoked by the strike among the users of Mackay service and a possible switch to the service of some other communication facility. As an incident to the strike the international union involved boycotted the company and urged customers to send their messages via competing companies.

The strike involved in the *National New York Packing & Shipping Company, Inc.*, case<sup>1</sup> resulted in a complete suspension of the activities of a company engaged in consolidating shipments from New York City, of which 90 percent are to out-of-State or foreign points. This consolidation of small shipments results in substantial savings to shippers using the company's service. The essence of the service is speed. Packages are rarely held in the company's place overnight. The company utilizes all means of transportation available out of New York City. All express and practically all motor carrier shipments are picked up by the carriers at the company's door. Deliveries to steamships are made by trucking companies hired by the company. On August 29, 1935, all of the company's employees except the office force and supervisory employees went out on strike. The strike lasted two weeks. During this period the company made no effort to do business. No packages were received or sent out. Many of the company's customers canceled their contracts with the company during the strike, and at the date of the hearing in March 1936, some of these customers had not renewed their contracts.

In the *Columbian Enameling & Stamping Co.* case<sup>2</sup> a strike caused the plant to close down from March 23 to July 23, 1935. The strike was caused by a disagreement between the union and the company over the terms of a collective agreement previously negotiated. On the day the strike was called the company refused a proposal made by a Labor Department conciliator as a basis for settlement. Thereafter it flatly refused to meet with representatives of the union. Under the protection of martial law, the company reopened its plant on an open shop and non-recognition basis. The Board found a violation of section 8 (5) in that the company refused to bargain collectively with its employees' representatives during the strike.

Exclusive of the coal used in the manufacture of its products, and cartons used in shipping the products, the major portion of the raw materials used by the company are shipped to its Terre Haute, Ind., plant from 20 other States. During the years 1933 and 1934 ship-

<sup>1</sup> 1 N. L. R. B. 1009.

<sup>2</sup> 1 N. L. R. B. 181.

ments received at the plant averaged 500 carloads per year. But in the first 11 months of 1935, the year of the strike, only 286 carloads of materials were shipped into the plant. There was a similar drop in the amount of out-bound shipments. For the year 1935, 85 percent of the company's products were shipped to 47 States, the District of Columbia, and Canada. In 1933 the company shipped out 302 carloads of its products, in 1934, 385, and in the first 11 months of 1935, only 215.

A strike at the plant of the *Rollway Bearing Company, Inc.*,<sup>1</sup> located at Syracuse, N. Y., had a very serious effect upon the company's interstate business. The company manufactures and sells roller bearings of all kinds. As a result of the company's refusal to bargain collectively with the representatives of its employees, 140 of the 180 employees struck on August 29, 1935. The strike was called off on October 24. The plant was picketed continuously during the strike. The strike substantially reduced the company's normal purchases of raw materials and sales of finished products in interstate commerce. As a direct result of the strike it became necessary for the company to cancel a substantial order placed with it by the Ford Motor Co. and likewise to cancel orders from the Ladle Conveyor Manufacturing Co., of New Philadelphia, Pa., and the Precision Bearing Co., Los Angeles, Calif. It was also necessary to defer shipment of other orders.

The *Bell Oil and Gas Company* case<sup>2</sup> illustrates the effect of a strike upon an integrated enterprise engaged in the production, transportation and refining of oil. The company owns and operates producing oil wells in what is known as the Northwest Field, which lies partly in Texas and partly in Oklahoma. Its wells are located in both States.

The company also owns and operates a pipe-line system through which oil produced in the Northwest Field is pumped to its refinery located north of the field in Oklahoma. This system consists of a number of gathering lines serving wells in both Oklahoma and Texas. These lines converge on a main line pump station located in Texas, where the oil is collected and pumped to the refinery. The company purchases crude oil from other producers operating in the field in both States. These producers are dependent upon the company for an outlet for their production, the company's pipe-line system being the only one serving them. The company's employees in its production and pipe-line departments are members of the International Association of Oil Field, Gas Well and Refinery Workers of America. Though eligible for membership in this union, the company's refinery employees are not members. From September 17 to 27, 1935, the company's employees in the production and pipe-line departments were out on strike and operations in those departments were completely suspended. During that period no oil was produced at the company's wells and, due to the shut-down in the pipe-line department, no oil was transported to the refinery in Oklahoma through the main pipe line from the pumping station in Texas. The effect of this strike upon operations at the refinery was almost immediate. Within a week the supply of crude oil on hand at the re-

<sup>1</sup> 1 N. L. R. B. 651.

<sup>2</sup> 1 N. L. R. B. 562.

finery was exhausted and the company was forced to ship in crude by rail. After the refinery became dependent upon rail shipments, production of gasoline dropped 50 percent. The effect of the strike was also felt by producers dependent upon the company to buy their production of crude. When the strike was called most of these producers had full stock tanks and consequently they were forced to curtail production. Many of them threatened to take their business away from the company and connect with some other pipe line. Thus the strike of the employees in production and transportation had serious repercussions throughout the field, as well as in the refinery.

In the *Santa Cruz Fruit Packing Co.* case,<sup>1</sup> the company's interstate shipments were considerably curtailed by reason of the sympathetic action of unions other than the union involved in the labor dispute. The company is engaged in canning, packing, warehousing, and shipping fruits and vegetables, the bulk of which is grown in California. In 1935 the company shipped over 36 percent of its total pack to points outside of California. There is a constant stream of loading and shipping of products out of the plant throughout the year. All such loading is a substantial and regular part of the work of the warehousemen involved in the case. The men involved in the case thus actually started all the products of the company upon the course of transportation to their ultimate destinations. Shortly after the organization of the warehousemen employed at the company's plant into Weighers, Warehousemen, and Cereal Workers' Local 38-44, International Longshoremen's Association, the company locked them out. They immediately formed a picket line with such effectiveness that eventually the movement of trucks from the warehouse to the wharves ceased entirely. Teamsters refused to haul the company's merchandise; warehousemen at dock warehouses who ordinarily unloaded the canned goods from railroad cars prior to their reloading into ships likewise refused to handle the company's cargo; stevedores who moved the goods from dock to ship refused to move the company's cargo both at the East Bay and San Francisco docks, and members of the sailors' union comprising the crews of steam schooners whose duties include the handling of cargo did the same. Thus the labor dispute had far-flung repercussions.

A similar effect on country-wide commerce because of concerted action by union sympathizers was described by witnesses for the employers in a suit to enjoin the conduct of the Board's hearing on a complaint of unfair labor practices on the part of the Eagle-Picher Lead Co. and Eagle Picher Mining & Smelting Co. (*Eagle-Picher Lead Co. et al. v. Madden et al.*, equity no. 1119, N. D. Okla., Kenamer, J. Injunction granted June 30, 1936. Appeal pending.) The labor dispute in question originated among employees of these companies operating an integrated lead mining, smelting, and refining enterprise with physical properties in the three contiguous States of Kansas, Oklahoma, and Missouri.

2. Even the threat of a strike may have immediate, direct, and serious effects upon the interstate business of an employer. In the *Bendix Products Corporation* case,<sup>2</sup> the company manufactures and sells automobile and aircraft parts at its plant in South Bend, Ind.

<sup>1</sup> 1 N. L. R. B. 454.

<sup>2</sup> 1 N. L. R. B. 173.

On September 17, 1935, Local No. 9, of the United Automobile Workers of America, empowered its executive committee to put into effect a strike vote which had been taken several months previous, in the event a controversy with the company concerning the lay-off of certain employees could not be settled within 48 hours. In the night of September 18 the company began to move some of the machinery out of the South Bend plant in order to set up a reserve plant at some distant point to be used in the event of any extensive labor disturbance. The strike was averted, but because of this threat the company's business was substantially curtailed. The General Motors Corporation withdrew approximately 20 percent of its usual volume of business from the company and the Ford Motor Co. decreased its normal purchases by about 50 percent.

The probable effect of a strike upon enterprises engaged extensively in interstate commerce can readily be envisaged. Thus in the case of the *Pennsylvania Greyhound Lines, Inc.*,<sup>1</sup> it appeared that the Greyhound Lines constitute a Nation-wide system engaged in the transportation for hire of passengers and property by motor busses. The Pennsylvania Greyhound Lines, Inc., one of the units affiliated with the parent Greyhound Corporation, forms what is known as the Pennsylvania Greyhound System, which operates through subsidiaries an interstate bus transportation system of nearly 5,000 miles in length, extending from New York, Philadelphia, and Atlantic City to Chicago, Indianapolis, and St. Louis. The Pittsburgh garage is but one of several located at strategic points in the area covered by the Pennsylvania Greyhound System. Pittsburgh is an important terminal in the northeastern part of the Greyhound Lines. The Pittsburgh garage services all of the Greyhound busses operating from, through, or to Pittsburgh. In addition, it performs services for other bus companies, operating both interstate and intrastate, for which direct charge is made. About 90 men are employed at the garage, where the unfair labor practices involved in the case before the Board occurred in part. The president and general manager of Pennsylvania Greyhound Lines, Inc., testified at the hearing that a threatened strike at the Pittsburgh garage, growing out of these unfair labor practices, would undoubtedly have seriously crippled the operation of the bus schedules.

In the *Washington, Virginia and Maryland Coach Company* case,<sup>2</sup> a somewhat similar situation was presented. The company there involved operates as an interstate carrier of passengers, mail, newspapers, and express by bus between the District of Columbia and points within the State of Virginia. The case differs from the *Pennsylvania Greyhound Lines* case in that bus drivers, as well as garage employees, were involved.

In the case of *The Associated Press*,<sup>3</sup> the probable effect of a strike upon the operations of a company engaged in interstate commerce was demonstrated. The Associated Press is a membership corporation formed for the purpose of collecting and interchanging information and intelligence for publication in the newspapers owned by the members. Its principal office is in New York City. It has its

<sup>1</sup> 1 N. L. R. B. 1.

<sup>2</sup> 1 N. L. R. B. 769.

<sup>3</sup> 1 N. L. R. B. 788.



own representatives in important cities in the United States and in other parts of the world, an affiliated company in Great Britain, which in turn has a branch in Paris, and an affiliate in Berlin. In addition, it has reciprocal arrangements with important news agencies in foreign countries for the interchange of news. The company has division points throughout the United States, each of which is responsible for the collection and distribution of news from its territory. Speed is of the essence, due to the perishable value of news. The employees involved in the case before the Board were the editorial employees at the New York City office. In general, the editorial work in this office consists of the receipt, revision, rewriting, and dispatch of news from and to all parts of the world. Any cessation of the editorial activities at the New York office would cause a break in the flow of foreign news and of some of the important domestic news, and until such break could be repaired or in some manner overcome, would seriously impede, if not prevent, the publication of newspapers in all parts of the country. In brief, a strike at that office, or at any of the company's offices, would hamper, impede, and interfere with the interstate commerce of the company.

The effect of a strike in interstate and foreign commerce shipping operations, such as the *International Mercantile Marine Company*,<sup>1</sup> is again obvious. The company, together with its subsidiaries and affiliates, owns and operates 14 vessels which carry freight, passengers, and mail in interstate and foreign commerce. The engineers employed by the company and its subsidiaries on their vessels were involved in the case before the Board. The question concerning the representation of these employees for the purposes of collective bargaining had created a state of confusion, uncertainty, and unrest among them. If that state of unrest had resulted in a substantial stoppage, it most certainly would have impaired the efficiency, safety, and operation of the company's vessels. Likewise, in the *Fruehauf Trailer Company* case,<sup>2</sup> unfair labor practices were charged against a company engaged in the building, assembling, and sale of commercial trailers and trailer parts. The operations at the company's plant in Detroit, Mich., are closely synchronized with the purchases of raw materials and parts, and the shipment of finished or semi-finished trailers and parts. So closely are purchase, production, and shipment of products synchronized that, on occasion, production or shipment is delayed until required parts arrive to complete the assembly of trailers. During the hearing in the case the company admitted that a labor dispute in its plant would substantially affect its operations, and that any lack of harmony among its employees would cause a slowing up of work, as a result of which goods would stop coming into the plant from other States, and the shipment of completed trailers and parts to other States would cease.

Integrated enterprises like the *Wheeling Steel Corporation*,<sup>3</sup> which are vitally dependent upon interstate commerce, would be seriously affected by a labor dispute in any one of their component parts. The company manufactures and sells iron and steel and the products thereof. It has 15 plants located in Ohio and West Virginia. It mines iron ore and coal from its own mines. With its barges and

<sup>1</sup> 1 N. L. R. B. 384.

<sup>2</sup> 1 N. L. R. B. 68.

<sup>3</sup> 1 N. L. R. B. 699.

other equipment it takes a part in transporting these materials from the mines in Minnesota, Ohio, West Virginia, and Pennsylvania to its plants. There it produces the coke used in reducing the ore, casts the ore into pig iron, and converts the pig iron into a great variety of finished and semi-finished products. During the progress through the plants, materials move out again at numerous stages of the process. Semi-fabricated materials—pig iron, blooms, billets, sheets—go to special steel fabricators for further work; go also for use in other industries, such as manufacture of automobiles and food canning. To insure Nation-wide distribution of its product, the company maintains warehouses and sales offices in all parts of the country. In the case before the Board, employees at the company's Portsmouth, Ohio, plant were involved. Eighty percent of the business of the Norfolk & Western Railroad and 85 percent of the business of the Baltimore & Ohio Railroad in Portsmouth consist of shipments to or from this plant. If operations at the plant were interrupted by a labor dispute, the Portsmouth business of these carriers would be seriously crippled. The ramifications of the company's operations are as broadly extended as the Nation. It is impossible to isolate the operations at a particular plant or to consider them as detached, separate—"local"—phenomena. Add to this condition the factor that the steel industry is becoming predominantly a special-order business, and the interstate aspect becomes even more pronounced. Thus, under this method of business, the consumer's order directly initiates particular plant activity; and, conversely, a breakdown in this activity makes imminent a stoppage of shipment.

Within two weeks of the issuance of the Board's decision in this case, organized employees of the company at the Portsmouth (Ohio) plant called a strike upon the company's refusal to comply with the Board's order to disestablish its company-dominated union. All operations at the plant ceased and were not resumed until July 13, 1936, when the strike was settled.

The *Harbor Boat Building Company* case,<sup>1</sup> discussed above, illustrates the disastrous effect which a strike of employees might have upon the commercial and industrial activity of the west coast. The company is engaged in the business of repairing and building fishing and other wooden boats. Ninety percent of its business in the years 1923-35 consisted of repairing and only 10 percent of building; 50 percent of its business is on larger boats. The boats repaired and built by the company range in size from 40 to 125 feet, with a cruising area as far south as the equator. All the fishing boats operating out of Los Angeles, where the company's yard is located, cruise beyond the 3-mile limit in the ordinary course of their operations. Fifty percent of these boats occasionally go into waters south of the Mexican line. In the course of its business the company sometimes also repairs fishing boats from Seattle and Tacoma, Wash. Many of the employees involved in the case before the Board had worked at different times for all the boat-building and repairing companies in Los Angeles Harbor. In view of the large proportion of union men in the woodworking trade in the Harbor, the effect of a strike on the operations of these boat-building companies is obvious. There was testimony that a strike called by the local union

<sup>1</sup> 1 N. L. R. B. 349.

involved in the case would involve every connected carpenters' local, thus affecting construction of buildings, wharves, and ocean liners, including the men in all the lumber and material yards in the vicinity, who number about 1,000 men in the Harbor district alone. The longshoremen might also strike in sympathy, thus halting interstate and foreign transportation. There was evidence that the company's unfair labor practice in refusing to bargain collectively might involve a walkout of all the carpenters' unions, longshoremen, seamen on barges and tugboat unions, which might result in 50,000 men leaving their work, thus creating an interruption of all commerce to and from Los Angeles Harbor, as well as dislocating industrial operations generally in southern California. Such a strike would practically paralyze shipping out of the Harbor and perhaps out of other Pacific coast ports. Following the issuance of the Board's decision, a strike definitely having the potentialities above described occurred among this company's employees, resulting from its failure to accept the procedure of collective bargaining as directed by the Board. The dispute was settled on May 27, 1936, by agreement between the parties, upon a basis consistent with the act.

It is peculiarly fitting that this discussion conclude with a reference to the complaint and election proceedings concerning employees of the *Duplex Printing Press Company*,<sup>1</sup> because these proceedings illustrate so well the accuracy of the Congressional findings as to the causes of industrial disputes burdening interstate commerce and the reasonableness of the means adopted in this act for the mitigation or elimination of such disputes. In 1913 a labor dispute arose between this company and its employees affiliated with the International Association of Machinists, growing out of the company's resistance to organization of the plant at Battle Creek, Mich. The dispute spread to sympathizers working on the transportation of the company's presses and their installation in other States, and finally culminated in a successful suit by the company under the Sherman Anti-trust Act, on the express ground that interstate commerce was being directly burdened and interfered with. *Duplex Printing Press Co. v. Deering*, 254 U. S. 443.

The proceedings referred to under this act involving this company were initiated on a charge and petition by employees at the same plant in Michigan, affiliated with the same parent labor organization, the International Association of Machinists. The charge alleged unfair labor practices affecting commerce, as defined in the act, by the discriminatory discharge or lay-off of 11 employees at the plant. The petition set forth a long history of unsuccessful efforts to establish collective bargaining relations with the company, and prayed that the Board investigate and certify the employees' choice of representatives for that purpose. At the joint hearing called in these matters the company, the union, and the Board's attorney entered into stipulations for the amicable adjustment and settlement of the questions at issue, whereby the union agreed to withdraw its charge, and the company agreed to recognize the jurisdiction of the Board over the subject matter, to reinstate the employees, to pay the union a lump sum in satisfaction of claims for

<sup>1</sup> 1 N. L. R. B. 82.

back pay, and to accept the union as the exclusive representative of its employees in the appropriate unit for the purposes of collective bargaining. It was further agreed that the Board certify the union as such representative, such certification to be operative for a period of one year (Oct. 9, 1935). The Board subsequently issued this certification.<sup>1</sup>

In this way, through the Board's intervention, amicable and sound industrial relations were established in lieu of the "more primitive methods of trial by combat", with its disastrous effect upon interstate commerce, utilized in the earlier difficulties between the same parties.

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<sup>1</sup> 1 N. L. R. B. 82.

# XIV. LIST OF CASES HEARD AND DECISIONS RENDERED

Name of case	Date hearing held—		Date decision issued
	By trial examiner	By Board *	
Pennsylvania Greyhound Lines, Inc.—Greyhound Management Co.		Oct. 22, 1935	Dec. 7, 1935
Delaware-New Jersey Ferry Co.	Oct. 31, 1935		Dec. 30, 1935
United Fruit Co.	Nov. 4, 1935		(b)
Gate City Cotton Mills	Nov. 6, 1935		Dec. 7, 1935
Wayne Knitting Mills			Do.
Fruehauf Trailer Co. (2 cases)	Nov. 6, 1935	Nov. 6, 1935	Dec. 12, 1935
Friedman-Harry Marks Clothing Co., Inc.	Nov. 12, 1935		Mar. 28, 1936
Railway Bearing Co., Inc.	Nov. 13, 1935		Apr. 28, 1936
Brown Shoe Co.	Nov. 14, 1935		May 29, 1936
Radiant Mills Co., Inc.			Mar. 4, 1936
Wheeling Steel Co. (representation)	Nov. 18, 1935	Nov. 18, 1935	(c)
El Paso Electric Co. (2 cases)	Nov. 19, 1935		June 23, 1936
Vegetable Oil Products Co., Inc.	do		Dec. 30, 1935
Duplex Printing Press Co. (representation)	Nov. 20, 1935		(b)
Duplex Printing Press Co. (complaint)	do		Mar. 4, 1936
Atlas Bag & Burlap Co., Inc.	do		Feb. 21, 1936
United Aircraft Mfg. Co.	Nov. 21, 1935		Jan. 15, 1936
Saxon Mills	do		Dec. 31, 1935
Clinton Cotton Mills	Nov. 22, 1935		(b)
American Commercial Alcohol Co.—American Distilling Co.	Nov. 25, 1935		Feb. 11, 1936
United States Stamping Co.	do		(b)
Western Union Telegraph Co.	do		June 20, 1936
National Casket Co., Inc.	do		Apr. 17, 1936
Sands Manufacturing Co.	Nov. 26, 1935		Jan. 21, 1936
New England Transportation Co.	Dec. 2, 1935		Jan. 25, 1936
Beer Silk Throwing Co., Inc.	do		Feb. 20, 1936
Mackay Radio and Telegraph Co.	do		(b)
Fisher Flouring Mills	do		(b)
Do.	Dec. 3, 1935		Feb. 8, 1936
Beaver Lois Mills	Dec. 4, 1935		Mar. 17, 1936
Timken Silent Automatic Co.	Dec. 5, 1935		June 4, 1936
Cleveland Chair Co.	do		Mar. 28, 1936
Friedman-Harry Marks Clothing Co., Inc.	do		May 14, 1936
M. H. Birge & Sons Co.	Dec. 9, 1935		Feb. 14, 1936
Columbian Enameling & Stamping Co.	do		Mar. 4, 1936
Algonquin Printing Co.	do		May 14, 1936
E. R. Haffelfinger Wall Paper Co.	Dec. 11, 1935		Mar. 11, 1936
Atlanta Woolen Mills			June 10, 1936
Greensboro Lumber Co.	Dec. 12, 1935		(supp. dec.)
Consumers Research, Inc.	Dec. 16, 1935		Apr. 27, 1936
Bendix Products Corporation	Dec. 17, 1935		(c)
Harbor Boat Building Co.	Dec. 18, 1935		Feb. 28, 1936
Jeffery DeWitt Insulator Co., Inc.	do		Mar. 17, 1936
Bell Oil & Gas Co.	Dec. 20, 1935		Apr. 24, 1936
Fashion Piece Dye Works Co., Inc.	Dec. 23, 1935		Apr. 17, 1936
American Hat Mfg. Co.	Dec. 27, 1935		Mar. 4, 1936
Canvas Glove Mfg. Co., Inc.	do		(b)
Anwelt Shoe Mfg. Co.	Dec. 30, 1935		Apr. 10, 1936
Ansin Shoe Mfg. Co.	do		June 12, 1936
Yale Underwear Co.	do		Do.
Dwight Manufacturing Co.	Jan. 2, 1936		Apr. 11, 1936
Oregon Worsted Co.	do		Mar. 9, 1936
Santa Cruz Fruit Packing	do		May 11, 1936
Canton Stamping & Enameling Co.	Jan. 6, 1936		Apr. 2, 1936
Pittsburgh Steel Co.	Jan. 7, 1936		Mar. 23, 1936
Protective Motor Service Co., Inc.	Jan. 8, 1936		Feb. 24, 1936
Atlantic Refining Co. (2 cases)	Jan. 9, 1936		Apr. 28, 1936
The Rabhor Co., Inc.	Jan. 10, 1936		Mar. 19, 1936
Chrysler Corporation	Jan. 13, 1936		Apr. 7, 1936
General Industries Co.	do		Feb. 14, 1936
Pusey, Maynes & Breish Co.	do		Apr. 30, 1936
			Apr. 8, 1936

\* Where the trial examiners held hearings in cases filed in the regional offices originally, and the Board held further hearings at a later date, the hearings before the trial examiners are the only ones listed.

<sup>b</sup> Settled before decision of Board was issued.

<sup>c</sup> Awaiting Board decision.

<sup>d</sup> Decision not issued because of pending injunction proceeding.

# XIV. LIST OF CASES HEARD AND DECISIONS RENDERED—Continued

Name of case	Date hearing held—		Date decision issued
	By trial examiner	By Board	
Segal-Maigen Co.....	Jan. 15, 1936		May 14, 1936
Aluminum Company of America.....		Jan. 16, 1936	Apr. 10, 1936
Smith Cabinet Manufacturing Co.....	Jan. 20, 1936		June 13, 1936
Bemis Bros. Bag. Co.....	Jan. 23, 1936		(e)
Lion Shoe Co.....	Jan. 27, 1936		(e)
Lehman Bros. Inc.....	Jan. 29, 1936		(e)
S & K Knee Pants Co.....	Jan. 30, 1936		(e)
Mann Edge Tool Co. (representation).....	do.		(e)
Mann Edge Tool Co. (complaint).....	do.		June 22, 1936
Edward E. Cox, Printer, Inc.....	do.		Apr. 22, 1936
Sunshine Hosiery Mill.....	Feb. 3, 1936		Apr. 29, 1936
Sneath Glass Co.....	Feb. 4, 1936		(e)
Foster Brothers Manufacturing Co., Inc.....	Feb. 6, 1936		June 3, 1936
Axton-Fisher Tobacco Co.....	Feb. 10, 1936		Apr. 23, 1936
John Blood & Sons Co.....	do.		Mar. 20, 1936
Wallace Manufacturing Co.....	do.		(e)
Gordon Baking Co.....	do.		(e)
Brown and Williamson Tobacco Co.....	Feb. 11, 1936		Apr. 23, 1936
Ward Baking Co.....	Feb. 12, 1936		(e)
International Mercantile Marine Co.....	Feb. 13, 1936		Mar. 21, 1936
Pioneer Pearl Button Co.....	do.		June 1, 1936
Ralph A. Freundlich, Inc.....	Feb. 17, 1936		(e)
Sommerville Manufacturing Co.—Somerset Mfg. Co.....	do.		June 3, 1936
Gray-Knox Marble Co.....	do.		(e)
Belmont Stamping & Enameling Co. (complaint).....	Feb. 20, 1936		(e)
Belmont Stamping & Enameling Co.....	do.		Mar. 20, 1936
International Filter Co. (2 cases).....	do.		Apr. 8, 1936
Mosinee Paper Mills Co.....	Feb. 26, 1936		May 1, 1936
Gibbs Underwear Co.....	Feb. 27, 1936		(e)
Englander Spring Bed Co.....	Mar. 2, 1936		(e)
Ohio Custom Garment Co.....	do.		(e)
Hardwick Stove Co.....	do.		(e)
Jones & Laughlin Steel Corporation.....		Mar. 2, 1936	Apr. 9, 1936
Typographic Service Co., Inc.....	Mar. 4, 1936		(e)
United Parlor Furniture Co.....	Mar. 6, 1936		(e)
Standard Lime & Stone Co.....	Mar. 9, 1936		(e)
S. L. Allen & Co., Inc.....	do.		May 13, 1936
Alabama Mills, Inc.....	do.		(e)
Wheeling Steel Corporation.....	do.	Apr. 2, 1936	May 12, 1936
F. C. Castelli Co., Inc.....	Mar. 12, 1936		(e)
Columbia Radiator Co.....	do.		June 2, 1936
International Nickel Co., Inc.....	do.		June 11, 1936
Alaska Juneau Gold Mining Co.....	do.		(e)
The Warfield Co.....	do.		(e)
Mesta Machine Co.....	Mar. 16, 1936		(e)
Moorestville Cotton Mills.....	do.		(e)
National New York Packing & Shipping Co.....	Mar. 17, 1936		June 29, 1936
Renown Stove Co.....	do.		(e)
Bradley Lumber Co. (2 cases).....	Mar. 19, 1936		(e)
Utterstrom Brothers, Inc.....	do.		(e)
O. G. Conn, Ltd.....	do.		(e)
St. Clair Rubber Co.....	Mar. 20, 1936		(e)
Washington, Virginia & Maryland Coach Co.....	Mar. 23, 1936		May 21, 1936
Crucible Steel Co. of America (complaint).....	do.		(e)
Cherry Cotton Mills.....	do.		(e)
Crucible Steel Co. of America (representation).....	do.		Apr. 16, 1936
Robert H. Foerderer, Inc.....	do.		(e)
S. Cohen & Sons.....	Mar. 30, 1936		(e)
Wholesale Radio Service, Inc.....	Apr. 2, 1936		(e)
Gray-Knox Marble Co. (representation).....	do.		(e)
Chelsea Silk Co.....	Apr. 6, 1936		(e)
Cook Ceramic, Inc.....	do.		(e)
Kentucky Firebrick Co.....	do.		(e)
Aluminum Co. of America.....	Apr. 7, 1936		(e)
The Associated Press.....	do.		May 21, 1936
The Associated Press (representation).....	do.		May 6, 1936
Carlisle Lumber Co.....	do.		(e)
American Oil Co.....	Apr. 9, 1936		(e)
Indiana Textile Mills, Inc.....	do.		(e)
Robinson & Golluber.....	Apr. 13, 1936		(e)
Atlas Drop Forge Co.....	do.		(e)

<sup>b</sup> Settled before decision of Board was issued.

<sup>c</sup> Awaiting Board decision.

<sup>d</sup> Decision not issued because of pending injunction proceeding.

# XIV. LIST OF CASES HEARD AND DECISIONS RENDERED—Continued

Name of case	Date hearing held—		Date decision issued
	By trial examiner	By Board	
Louis Hornick Co.....	Apr. 16, 1936	-----	(e)
Bemis Brothers Bag Co.....	Apr. 17, 1936	-----	(e)
Signal Knitting Mills.....	Apr. 20, 1936	-----	(e)
Hena Knitting Mills.....	do.....	-----	(e)
Samson Tire & Rubber Corporation.....	do.....	-----	(e)
Tucker Oil Co.....	Apr. 24, 1936	-----	(e)
Demarest Silk Co.....	Apr. 27, 1936	-----	(e)
The Optical Products Co.....	Apr. 29, 1936	-----	(e)
Gardner-Denver Co.....	do.....	-----	(e)
Boss Manufacturing Co. (2 cases).....	Apr. 30, 1936	-----	(e)
Riverside Knitting Mills.....	do.....	-----	(e)
Aluminum Products Co.....	do.....	-----	(e)
Trenton Mills, Inc.....	May 1, 1936	-----	(e)
Wellwood-Norwich Silk Mills, Inc.....	May 4, 1936	-----	(e)
Club Troika, Inc.....	do.....	-----	(e)
Pacific Mills Co.....	do.....	-----	(e)
S. Gutman & Co., Inc.....	do.....	-----	(e)
American Potash & Chemical Co.....	do.....	-----	(e)
International Harvester Co.....	-----	May 5, 1936	(e)
Chicopee Manufacturing Corporation.....	May 7, 1936	-----	(b)
Auth Electrical Specialty Co., Inc.....	do.....	-----	(b)
J. Freezer & Sons, Inc.....	do.....	-----	(e)
Agwilines, Inc.....	do.....	-----	(e)
Do.....	do.....	-----	(b)
Toledo Shipbuilding Co., Inc. (2 cases).....	May 11, 1936	-----	(b)
Quidnick Dye Works.....	May 14, 1936	-----	(e)
Magnolia Petroleum Co.....	do.....	-----	(b)
American Tobacco Co.....	do.....	-----	(e)
Whiterock Quarries, Inc.....	May 15, 1936	-----	(b)
Fall River Gas Works Co.....	May 18, 1936	-----	(e)
Fit-Rite Slipper Co., Inc.....	do.....	-----	(e)
Selfast Dress Co.....	do.....	-----	(b)
St. Joseph Stock Yards Co.....	do.....	-----	(e)
Prudential Knitting Mills.....	May 21, 1936	-----	(b)
Memphis Furniture Manufacturing Co. (2 cases).....	do.....	-----	(e)
Clark & Reid.....	May 25, 1936	-----	(e)
Atlas Mills.....	do.....	-----	(e)
J. W. Sanders Cotton Mills, Inc.....	do.....	-----	(e)
Stanley Works Co.....	May 28, 1936	-----	(e)
Richards Wilcox Manufacturing Co.....	do.....	-----	(e)
D & H Motor Freight Co.....	June 8, 1936	-----	(e)
Lykes Brothers—Ripley Steamship Co. (3 cases).....	June 12, 1936	-----	(e)
Chesapeake Manufacturing Co.....	June 15, 1936	-----	(e)
Claussner Hosiery Co.....	-----	June 17, 1936	(e)
Nolan Motor Co.....	June 22, 1936	-----	(e)
Schonfeld & Reis.....	June 25, 1936	-----	(e)
Bovertown Burial Casket Co.....	June 26, 1936	-----	(e)
Fisher Body Corporation.....	June 29, 1936	-----	(e)
Chevrolet Motor Co.....	do.....	-----	(d)

<sup>b</sup> Settled before decision of Board was issued.

<sup>c</sup> Awaiting Board decision.

<sup>d</sup> Decision not issued because of pending injunction proceeding.

## XV. FISCAL AFFAIRS

### FUNDS TRANSFERRED AND APPROPRIATED

There was available to the Board during the fiscal year 1936<sup>1</sup> the sum of \$659,000 for salaries and other obligations. This amount was derived from the following sources:

Unobligated balance transferred from the National Labor Relations Board, 1934-35-----		\$304,000
Appropriations:		
Supplemental Appropriation Act, fiscal year 1936:		
Salaries and expenses-----	\$275,000	
Printing and binding-----	15,000	
		290,000
Deficiency Appropriation Act, fiscal year 1936-----		65,000
Total-----		659,000

### EXPENDITURES AND OBLIGATIONS

The expenditures and obligations for the fiscal year ended June 30, 1936, are as follows:

Salaries-----	\$423,619
Travel expense-----	58,490
Communications-----	26,090
Reporting-----	41,720
Rentals-----	29,799
Furniture and equipment-----	12,363
Supplies and materials-----	11,347
Special and miscellaneous-----	1,642
Transportation of things-----	501
Total salaries and expenses-----	605,571
Printing and binding-----	15,000
Grand total obligations-----	620,571
Allotment to be obligated in 1937-----	38,429
Total available funds-----	659,000

<sup>1</sup> The operations of the new Board began on Aug. 27, 1935.